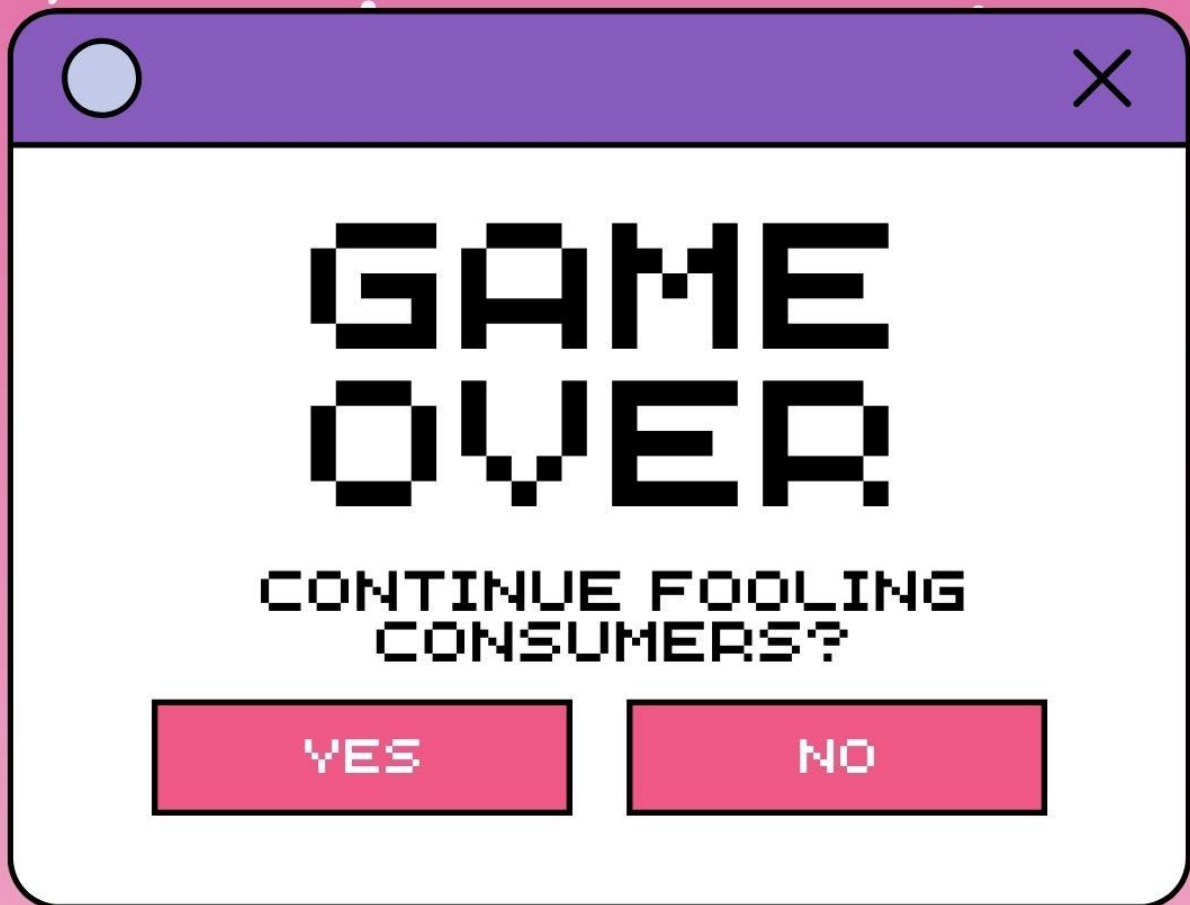


# GAME OVER

Consumers fight for  
fairer in-game purchases



A legal assessment of premium in-game currencies  
from a consumer law perspective

*NB: evidence and screenshots used to substantiate this complaint were taken in spring-summer 2024 and are listed in the annexes accompanying this document.*



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Co-funded by the European Union

# What this complaint is about and why it matters to consumers



BEUC and 22 of its member organisations<sup>1</sup> from 17 countries have filed a complaint on 12 September 2024 to the European Commission and the network of consumer protection Authorities (CPC-Network) to denounce several deceptive practices by leading video game companies (Activision Blizzard, Electronic Arts, Epic Games, Mojang Studios, Roblox Corporation, Supercell and Ubisoft) marketing popular games (such as Fortnite, EA Sports FC 24, Minecraft, Clash of Clans and others) and affecting millions of European consumers.

Today, more than half of consumers in Europe play video games.<sup>2</sup> Children are particularly exposed as 84% of them aged 11-14 play video games regularly.<sup>3</sup> Over the past years, video game companies have followed business models relying heavily on in-game purchases. In 2020, in-game purchases generated more than US\$50 billion globally (approx. €46 billion), representing about one-quarter of revenues in the video game market<sup>2</sup>. Premium currencies are widely available in video games, but their use and relevance go beyond this sector. They are also increasingly available on online platforms, including social media (e.g. TikTok, Twitch) and online marketplaces (such as Amazon). Following our analysis, we have reasons to believe that consumers fall prey to many deceptive practices when buying premium in-game currencies in video games. Moreover, we believe traders fail to provide consumers, in particular children, with safe online environments that fully comply with EU consumer rules.

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<sup>1</sup> BEUC member organisations participating in this action are Testachats / Testaankoop (Belgium), Bulgarian National Consumers Association (BNAAC) (Bulgaria); Kypriakos Syndesmos Katanaloton – CCA (Cyprus); Forbrugerrådet Tænk, (Denmark); CLCV and UFC-Que Choisir (France); Kuluttajaliitto – Konsumentförbundet (Finland); vzbv (Germany), EKPIZO and KEPKA (Greece); Adiconsum and Altroconsumo (Italy), Consumentenbond (the Netherlands); Forbrukerrådet (Norway); Federacja Konsumentow - FK (Poland); DECO (Portugal), Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad (Slovakia) ; Sveriges Konsumenter (Sweden); ASUFIN, CECU and OCU (Spain); Fédération romande des consommateurs – FRC (Switzerland).

<sup>2</sup> European Parliament, January 2023, Consumer protection in online video games: a European single market approach (2022/2014(INI)), [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0008\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0008_EN.pdf)

<sup>3</sup> Statista, Video game market revenue worldwide in 2022, by segment (in billion U.S. dollars), <https://www.statista.com/statistics/292751/mobile-gaming-revenue-worldwide-device/>.

# Our call to CPC-Network and the European Commission

For the reasons set out hereinafter, we suspect **several widespread infringements with a Union Dimension** of EU Directive 2011/83/EU on consumer rights (“Consumer Rights Directive” - CRD), EU Directive 2005/29/EC on unfair business-to-consumer commercial practices (“Unfair Commercial Practices Directive” – UCPD) and Directive 93/13/EEC on unfair terms in consumer contracts (UCTD).

We call on the CPC-Network under the coordination of the European Commission to:

- **Start a coordinated enforcement action** to stop the unfair commercial practices highlighted in this alert and to ensure that the rights of consumers - especially those of young consumers - are fully respected. In particular to:
  - **Ensure full price transparency** of premium in-game currencies by requiring traders to display, in a clear and easily accessible way, an equivalent in real and local fiat currency before any in-game purchases made through in-game premium currencies. Behavioural insights can provide useful information to assess under which format, at which moment and under which conditions such an equivalence should be displayed to consumers to ensure that the information is adequately noticed and understood (in particular, by the youngest ones).
  - **Stop using unfair terms related to premium in-game currencies**, and notably (but not exclusively) unfair terms allowing traders to:
    - Withdraw game features at any moment thus exposing consumers to lose their contents at any time (including their premium in-game virtual currencies),
    - Unilaterally modify the value of in-game items without systematically informing consumers (including their premium in-game virtual currencies).
    - Denying the existence of a legal guarantee or stating that there is no right of withdrawal or right to a refund in any circumstances.
    - Collect consumers' personal data via vague, and/or confusing wording (such as “personalise/customise your gaming experience” and similar) likely to mislead consumers.
- **Clarify that in-game purchases should be deactivated by default as a matter of professional diligence.** Game companies know that children and teenagers are massively playing their games. Therefore, companies should be required to better protect young gamers, by default and by design, as a matter of professional diligence. This could be done by requiring them to deactivate by default in-game purchases. Enabling in-game purchases should be a deliberate choice made by consumers.

- **Publish a Common Position<sup>4</sup> further explaining authorities' assessment of the contentious practices.** This is an important step to provide a clear signal and to promote compliance with EU rules in the video game sector.<sup>5</sup>
- **To make more systemic use of the 'vulnerable consumer' benchmark as laid down under EU Directive 2005/29/EC when enforcing EU consumer law in the gaming sector.** This is because underaged consumers are massively present in all types of video games regardless of their PEGI rating<sup>6</sup>.

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<sup>4</sup> See Article 19(3) of the Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

<sup>5</sup> This is also the line take by the Autoriteit Consument and Markt (ACM), in its contribution to the EU Fitness Check on Digital Fairness Protecting Consumers in Digital Environments, November 2022, [https://www.acm.nl/system/files/documents/acm-reactie-op-eu-fitness-check-on-digital-fairness\\_0.pdf](https://www.acm.nl/system/files/documents/acm-reactie-op-eu-fitness-check-on-digital-fairness_0.pdf)

<sup>6</sup> Including those labelled with a PEGI rating indicating "not suitable for players under 18 or 16". According to recent research from the Gambling Health Alliance, 83% of children and young people play video games when they are below the set PEGI age classification. [FINAL-GHA-submission-Loot-Boxes-call-for-evidence-1.pdf](#)

## List of key terms used in this document

<b>Premium in-game currencies</b>	In-game currency that can be purchased with real money (euros or others). They can take different forms and terminologies, such as gems, points, coins, or others.
<b>Earned currencies</b>	In-game currency that consumers can acquire <b>by playing the game</b> (e.g., by completing quests or passing levels). This category falls outside the scope of this alert.
<b>Free-to-play (F2P) video games (or Freemium)</b>	Games that can be downloaded and played for free and where additional content can be bought within the game.
<b>Paid games</b>	Games that must be bought to be played.
<b>In-game purchases</b>	In-game purchase is a monetisation strategy where consumers buy digital content (e.g., virtual items, features,) within a video game, using real-world currency or in-game premium currencies. Despite not being systematically implemented by game companies, the in-game purchase method is widely used in “free-to-play” games to provide developers and publishers with recurring revenue streams. Paid games also largely contain in-game purchases. These purchases can take many forms: power-ups, additional features, character avatars, premium in-game currency, special abilities, premium content, and other game elements. In-game purchases of digital content that are paid directly through real currency and without the use of in-game premium virtual currency fall outside the scope of this alert.
<b>Microtransaction</b>	The industry commonly uses the term “microtransaction” as a synonym for in-game purchases. Yet, as shown hereafter <sup>7,8</sup> , these purchases should by no means be regarded as “micro”, as some of them can be up to several hundreds of euros. In this document, we will use the term “in-game purchases” as it covers microtransactions (small amounts) as well as any other in-game transactions.
<b>Pan European Game Information (PEGI)</b>	<p>The PEGI rating for video games was developed by the European Entertainment Software Federation (ISFE - Interactive Software Federation of Europe, now «Video Games Europe») to enable parents to make informed decisions when buying video games. It was launched in 2003 and is now used in over 38 European countries.<sup>9</sup></p> <p>The PEGI classification is based on a game's suitability for a specific age group. For instance, PEGI-3 means that players from 3 and above can play the game. The PEGI rating is not linked to the game's level of difficulty.<sup>10</sup> In addition to age labels, PEGI also assigns content labels, including one for in-game purchases. This label of in-game purchases has no automatic effect on the age rating.<sup>11</sup></p>

<sup>7</sup> See Section 2.

<sup>8</sup> See also: Forbrukerradet (the Norwegian Consumer Council – NCC) Report, INSERT COIN How the gaming industry exploits consumers using loot boxes, 2022, <https://storage02.forbrukerradet.no/media/2022/05/2022-05-31-insert-coin-publish.pdf>

<sup>9</sup> <https://pegi.info/fr/page/lorganisation-pegil>, last consulted on 8 July 2024.

<sup>10</sup> <https://pegi.info/fr>, last consulted on 8 July 2024.

<sup>11</sup> This label of in-game purchases has no automatic effect on the age rating and could be present together with the age rating label +3 (e.g : EA Sports FC 24). See ID cards of the games in Section 2 for more examples.

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# 1. The context: in-game purchases & premium in-game currencies in video games

## 1.1 The boom of in-game purchases

Video games are one of the fastest-growing economic sectors in Europe.<sup>12</sup> More than half of EU consumers between the ages of 6 and 64 regularly play video games.<sup>13</sup> Children, in particular, are very active players: 73% of children between 6 and 10, and 84% of those aged 11-14 play video games.

Historically, the video game industry derived its revenues from the direct sale of video games (on a physical storage medium or via online platforms). However, a major shift in business models has taken place in the last 20 years. **In-game purchases have nowadays become a significant source of revenue for the industry**,<sup>14</sup> generating more than 50 billion dollars in 2020 globally (approx. €46 billion), which represents about one-quarter of revenues in the video game market.<sup>15</sup>

In-game purchases of digital content (such as ‘skins’, ‘lootboxes’, and others) are today used in many video games. They are particularly important in the so-called **free-to-play** video games. For instance, video games such as Fortnite can make up to USD 2M (approx. €1.84M) a day thanks to in-game purchases.<sup>16</sup>

This shift in the business model applies to **paid games as well**. In 2021, the video game company Electronic Arts (EA) earned more than USD 1.62 billion (approx. €1.49 billion) from in-game purchases in FIFA 21 (this amounted to 29% of the company’s entire revenue).<sup>17</sup> Activision Blizzard, another major video game company, reported more than USD 1.2 billion (approx. €1.1 billion) in revenue from in-game purchases between July and September 2020.<sup>18</sup>

According to the industry<sup>19</sup>, the average total spending by children in in-game purchases per month increased from 33€ in 2020 to 39€ in 2023. This represents a rise of approximately 18.1%

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<sup>12</sup> European Parliament, January 2023, REPORT on consumer protection in online video games: a European single market approach, (2022/2014(INI)), [https://www.europarl.europa.eu/doceo/document/A-9-2022-0300\\_FR.html#\\_ftnref15](https://www.europarl.europa.eu/doceo/document/A-9-2022-0300_FR.html#_ftnref15).

<sup>13</sup> European Parliament, January 2023, Consumer protection in online video games: a European single market approach (2022/2014(INI)), [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0008\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0008_EN.pdf).

<sup>14</sup> Statista, Consumer spending on in-game purchases worldwide from 2020 to 2025, <https://www.statista.com/statistics/558952/in-game-consumer-spending-worldwide/>.

<sup>15</sup> Statista, Video game market revenue worldwide in 2022, by segment (in billion U.S. dollars), <https://www.statista.com/statistics/292751/mobile-gaming-revenue-worldwide-device/>.

<sup>16</sup> See YouTube video, Are "Free" Video Games Really Free?, Two Cents channel, available [here](https://www.youtube.com/watch?v=...). Last consulted on 8 July 2024.

<sup>17</sup> “EA’s Ultimate Team raked in \$3k per minute last year”, Kris Holt, <https://www.engadget.com/ea-fifa-ultimate-team-net-revenue-2021-loot-boxes143258804.html>

<sup>18</sup> “Activision Blizzard Made Over \$1 Billion From Microtransactions In Three Months”, Jon Bitner, <https://www.thegamer.com/activision-blizzard-made-1-billion-microtransactions-three-months/>

<sup>19</sup> Video Games Europe, 2023, In-game spending – A report by Ipsos for Video Games Europe (formerly ISFE) on parents' supervision of in-game spending, [https://www.videogameseurope.eu/wp-content/uploads/2023/09/Video-Games-Europe\\_In-Game-Spending-2023\\_Final-Sept.pdf](https://www.videogameseurope.eu/wp-content/uploads/2023/09/Video-Games-Europe_In-Game-Spending-2023_Final-Sept.pdf).



in 3 years. Stories of children excessively spending on video games' digital content are common and regularly highlighted in the news.<sup>20</sup>

## 1.2 The dual purpose of in-game premium currencies

### 1.2.1 The fast-paced market for in-game premium currencies

Although in-game purchases can be made directly in local fiat currency, many games rely on **in-game premium currencies as an additional layer** between the real currency spent by consumers and the virtual items they purchase. These video games require consumers to exchange real currency for in-game premium currency (called for example 'Coins', 'Gems', 'Points' or others depending on the game), which they can then use to purchase digital content in the game (as shown in Annex 1<sup>21</sup>).

In-game premium virtual currencies are widely available in many games, including those played by hundreds of millions of consumers worldwide. A review of the 50 most played video games in 2023<sup>22</sup> showed that 21 of them (42%) included premium in-game currencies. Out of these 21 games, 8 of them had a PEGI age rating of 12 or younger.

More generally, issues with **premium virtual currencies are systemic and the problems associated with them go beyond the scope of video games**. They are for instance also massively present on social and audiovisual media service platforms such as TikTok ('coins')<sup>23</sup> or Twitch ('bits').<sup>24</sup> Another sector where premium virtual currencies are used is app stores. For example, Amazon now offers consumers the possibility to buy so-called 'Amazon Coins' which they can use for purchases in the Amazon Appstore.<sup>25</sup>

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<sup>20</sup> See for example Grunge, February 2023, Kids Who Wasted Thousands Of Dollars On Gaming, <https://www.grunge.com/29299/kids-wasted-thousands-dollars-parents-money-games/>.

<sup>21</sup> See Annex 1: Traders in-game purchasing processes with their premium in-game currencies.

<sup>22</sup> The 48 most played games on Steam in 2023 (platinum, gold and silver category), as well as Fortnite and Minecraft which are not available on Steam. Steam, Best of 2023: Most Played, <https://store.steampowered.com/charts/bestofyear/BestOf2023?tab=3>.

<sup>23</sup> <https://www.tiktok.com/coin>, last consulted on 8 July 2024.

<sup>24</sup> <https://www.twitch.tv/bits>, last consulted on 8 July 2024.

<sup>25</sup> <https://www.amazon.com/Amazon-Coins-Apps-Games/b?ie=UTF8&node=13927674011>, last consulted on 8 July 2024. In addition, in-game premium currencies have also attracted media with reports showing that these virtual currencies may also be used for money-laundering purposes. There is evidence of fraudsters and other criminals can for example use stolen credit card information to purchase virtual currencies in video games. These currencies can then be resold, at a discount, to other players in exchange for real money. While trading virtual currencies against real money is, in the case of most video games, not permitted by the terms and conditions of the video game publishers, these practices are in reality widespread and take place on grey markets online. Laundering money in this way is not only enabled by virtual currencies. Virtual items, whether bought with virtual currency or not, can also be traded in similar ways. However, the generic nature of virtual currency (compared to virtual items which can be very specific and therefore easily recognisable) makes them particularly prone to being misused

## 1.2.2 In-game premium currencies: digital content, means of payments or both?

In-game premium currencies have a **dual purpose**. On the one hand, they are **digital contents**<sup>26</sup>, like any other type of in-game purchase (such as lootboxes). On the other hand, they are also **means of payment** that can be used in games directly. Buying premium in-game currencies is most of the time a first mandatory step allowing consumers to make additional in-game purchases. Such a dual purpose creates legal uncertainty as to the rules applicable to in-game premium currencies themselves and to the subsequent purchases made through them<sup>27</sup>.

The video game industry has taken the view that there is a contractual agreement with consumers only when the latter purchases the premium in-game currency as digital content (in the game shop for instance).<sup>28</sup> According to this approach, the subsequent purchases of digital content with in-game premium currency do **not** constitute a new contract, but the mere exercise of a license. Consequently, consumer law and the associated consumer rights (e.g., right to obtain pre-contractual information about prices of digital contents, information about legal guarantee or right of withdrawal) would not apply to in-game purchases made through in-game premium currencies.

**We believe that this approach is flawed** as the Digital Content Directive clarifies that consumers should benefit from the same consumer rights regardless of whether their purchases are made with traditional money or with virtual money (called “Digital representations of value” and referred to “as a means of payment” under the DCD).<sup>29</sup> In-game purchases made with premium in-game currency benefit from the full range of rights foreseen under the EU consumer law acquis. Moreover, a parallel should be drawn with **other sectors where representations of value are also used to make payments**. This is the case of air travel contracts concluded with miles or tokens used in festivals. In such instances, it is noteworthy that EU consumer law and relevant sectorial legislation<sup>30</sup> apply to these types of contracts. It should be the same for all in-game purchases made with premium in-game currencies.

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<sup>26</sup> Article 2(1) DCD : ‘digital content’ means data which are produced and supplied in digital form;

<sup>27</sup> See for instance ACM Non-paper EU Fitness Check on Digital Fairness Protecting Consumers in Digital Environments, November 2022, [https://www.acm.nl/system/files/documents/acm-reactie-op-eu-fitness-check-on-digital-fairness\\_0.pdf](https://www.acm.nl/system/files/documents/acm-reactie-op-eu-fitness-check-on-digital-fairness_0.pdf)

<sup>28</sup> <https://www.egdf.eu/documentation/7-balanced-protection-of-vulnerable-players/consumer-protection/in-game-currencies-2023/> , last consulted 8 July 2024.

<sup>29</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (DCD), Recital 23: “*Digital representations of value such as electronic vouchers or e-coupons are used by consumers to pay for different goods or services in the digital single market. Such digital representations of value are becoming important in relation to the supply of digital content or digital services and should therefore be considered as a method of payment within the meaning of this Directive. Digital representations of value should also be understood to include virtual currencies, to the extent that they are recognised by national law. Differentiation depending on the methods of payment could be a cause of discrimination and provide an unjustified incentive for businesses to move towards supplying digital content or a digital service against digital representations of value[...]*”.

<sup>30</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

Legal rules applicable to in-game premium currencies			
In-game premium currency as digital content		In-game premium currency as a means of payments	
<i>EU Directive 2019/770</i> (“Digital Content Directive”)	<p>The Directive aims to address problems across different categories of digital content, digital services, and their supply. It specifies that the notion of digital content or digital services includes <i>inter alia</i> computer programs, applications, video files, audio files, music files and digital games.<sup>31</sup></p> <p>We believe that this covers the games themselves and the subsequent in-game purchases. This includes the virtual in-game items (skins, season pass) and all premium in-game currencies which must be purchased first, to then make in-game purchases.</p>	<i>EU Directive 2019/770</i> (“Digital Content Directive”)	<p>The Directive clarifies that consumers should benefit from the same consumer rights regardless of whether their purchases are made with traditional money (euro or similar) or with virtual money (called “Digital representations of value” and referred to “as a means of payment” under the DCD).<sup>32</sup> Otherwise, this could lead to discrimination between consumers, as different sets of applicable consumer rights would apply, depending on the means of payment used to make the purchases. This would also incentivise businesses to avoid transactions in real money to circumvent the EU consumer law acquis.</p>
<i>Consequences</i>	Premium in-game currencies are digital content under the Digital Content Directive. As such, the whole EU consumer acquis is fully applicable (legal guarantee, right of withdrawal etc.).	<i>Consequences</i>	Purchases made in-game with premium in-game currencies (as an in-game “means of payment”) such as skins or “lootboxes” benefit from the full range of rights foreseen under the consumer law acquis, and more specifically under the DCD, UCPD, UCTD and CRD.

<sup>31</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (DCD), Article 2(1) & (2) and Recital 19.

<sup>32</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (DCD), Recital 23: “*Digital representations of value such as electronic vouchers or e-coupons are used by consumers to pay for different goods or services in the digital single market. Such digital representations of value are becoming important in relation to the supply of digital content or digital services and should therefore be considered as a method of payment within the meaning of this Directive. Digital representations of value should also be understood to include virtual currencies, to the extent that they are recognised by national law. Differentiation depending on the methods of payment could be a cause of discrimination and provide an unjustified incentive for businesses to move towards supplying digital content or a digital service against digital representations of value[...]*”.

## 1.3 Industry narrative vs consumer perceptions of in-game premium currencies: a reality check.

The video game industry generally argues that consumers enjoy using in-game premium currencies as this is part of the gaming experience. According to this narrative, consumers would also be well aware of the functioning and overall purpose of in-app premium currencies.<sup>33</sup> Yet evidence on what consumers think about premium in-game currencies tends to **debunk these myths**. First, there are many testimonials of consumers complaining about in-game premium currencies.<sup>34</sup> Second, researchers have shed light<sup>35</sup> on more than 30 practices identified by consumers as misleading, aggressive, or unfair and the latter precisely include premium in-game currencies. More specifically, in this research, consumers:

- Perceived the mere presence of in-game premium virtual currencies as problematic because they “[obscure] *the real price of game items and [make] decision-making more difficult*”.
- Stressed that the presence of several virtual currencies in games (as is for instance the case in Diablo Immortal by Blizzard Entertainment<sup>36</sup>) is even more problematic as it causes “*an extreme case of confusion*” and makes the conversion of virtual currency into real money and the real costs of in-game purchases unclear.
- Highlighted that there may be misalignments between the actual costs of in-game items and the available amount of virtual currency and that this may constitute unfair design practices used to make consumers increase their in-game spending (as it is, for instance, the case in Diablo IV).<sup>37</sup>

## 1.4 Assessing the contentious practices through the vulnerable consumer benchmark

While the practices highlighted in this report are already problematic from the point of view of adult consumers, they are even more alarming as these games are played by numerous children and teenagers who may particularly be vulnerable and receptive to unfair commercial practices.

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<sup>33</sup> <https://www.egdf.eu/documentation/7-balanced-protection-of-vulnerable-players/consumer-protection/in-game-currencies-2023/>

<sup>34</sup> [How do you feel about games/services that use virtual currencies? \(e.g. Microsoft Points\) : r/Games \(reddit.com\)](https://www.reddit.com/r/Games/comments/185375n/us_kids_want_games_subscriptions_and_virtual/), last consulted on 8 July 2024;  
[https://www.reddit.com/r/Games/comments/185375n/us\\_kids\\_want\\_games\\_subscriptions\\_and\\_virtual/](https://www.reddit.com/r/Games/comments/185375n/us_kids_want_games_subscriptions_and_virtual/), last consulted on 8 July 2024;  
[https://www.reddit.com/r/Games/comments/ifwq40/are\\_we\\_powerless\\_as\\_sports\\_game\\_consumers/](https://www.reddit.com/r/Games/comments/ifwq40/are_we_powerless_as_sports_game_consumers/), last consulted on 8 July 2024.

<sup>35</sup> Predatory Monetisation? A Categorisation of Unfair, Misleading and Aggressive Monetisation Techniques in Digital Games from the Player Perspective, October 2021, Journal of Business Ethics 181(3):1-17, DOI: [10.1007/s10551-021-04970-6](https://doi.org/10.1007/s10551-021-04970-6), last consulted on 8 July 2024.

<sup>36</sup> See BEUC Members Forbrukerrådet (the Norwegian Consumer Council) report: GET PLAYED, The true cost of virtual currency, published on 12 September 2024, available [here](#).

<sup>37</sup> Idem.

As further explained, several video games covered in this alert have PEGI ratings that make their games appropriate for children (e.g. EA Sports FC’s PEGI rating is 3+).<sup>38</sup> Although other games may have PEGI ratings that exclude children, studies have shown that often they are still played by underaged users. For example, a survey conducted by the Gambling Health Alliance with 1,000 young consumers revealed that 83% of them declared playing games with a PEGI rating above their age.<sup>39</sup> **There is therefore a gap between the theoretical and the real audience of video games.**

EU consumer law imposes **higher obligations to protect vulnerable consumers** on traders.<sup>40</sup> This is because this category of consumers is likely to be particularly at risk due to, among other things, their age, credulity, or lack of maturity. The UCPD identifies children as an example of “vulnerable consumers” who may be affected by unfair commercial practices. The UCPD Guidelines<sup>41</sup> also identifies teenagers as a group of vulnerable consumers.

The CRD makes a similar reference to the vulnerable consumer benchmark and imposes on traders to “take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee”.<sup>42</sup>

As regards to the UCTD, although the law does not make any reference to the vulnerable consumer benchmark, it is also applied when assessing the unfairness of contract terms<sup>43</sup>. Traders’ commercial practices and their use of contractual terms should therefore be assessed from the perspective of the vulnerable group of children and teenagers who may be particularly at risk in the video games sector.

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<sup>38</sup> See Section 2.

<sup>39</sup> Gambling Health Alliance, 2021, Loot Boxes in Video Games – Contribution to Call for Evidence, <https://www.rsph.org.uk/static/9399a81e-4fa5-475e-b073079335241806/FINAL-GHA-submission-Loot-Boxes-call-for-evidence.pdf>.

<sup>40</sup> According to Article 5 UCPD, where a commercial practice is aimed at a particular group of consumers, its impact should be assessed from the perspective of the average members of that group.

<sup>41</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29&qid=1640961745514>

<sup>42</sup> Recital 34 of the CRD

<sup>43</sup> See (inter alia) S. Whittaker, “Language or Languages of Consumer Contracts?”, Cambridge Yearbook of European Legal Studies, 2005-2006, 244.

## 2. Targeted traders

### 2.1 Overview

We believe that the following **traders** (in alphabetical order) have engaged in **unfair practices** concerning premium in-game currencies used in their respective video games:

Trader	Game	PEGI age rating	Estimated number of players worldwide	Premium virtual currency	Least expensive purchasing option		Most expensive purchasing option	
					Price	Currency obtained	Price	Currency obtained
<b>Activision Blizzard</b>	<i>Diablo IV</i>	18	12 million	Platinum	€4.99	500	€149.99	18,500
<b>Electronic Arts</b>	<i>EA Sports FC 24</i>	3	14 million	FC Points	€0.99	100	€99.99	12,000
<b>Epic Games</b>	<i>Fortnite</i>	12	237 million	V-Bucks	€8,99	1,000	€89.99	13,500
<b>Mojang Studios</b>	<i>Minecraft</i>	7	166 million	Minecoins	€1.99	320	€59.99	8,800
<b>Roblox Corporation</b>	<i>Roblox</i>	! <sup>44</sup>	216 million	Robux	€5.99	400	€239.99	22,500
<b>Supercell</b>	<i>Clash of Clans</i>	7	75 million	Gems	€1.19	80	€119.99	14,000
<b>Ubisoft</b>	<i>Rainbow Six Siege</i>	18	70 million	R6 Points	€4.99	600	€99.99	16,000

The video games mentioned above are available in all EU Member States.

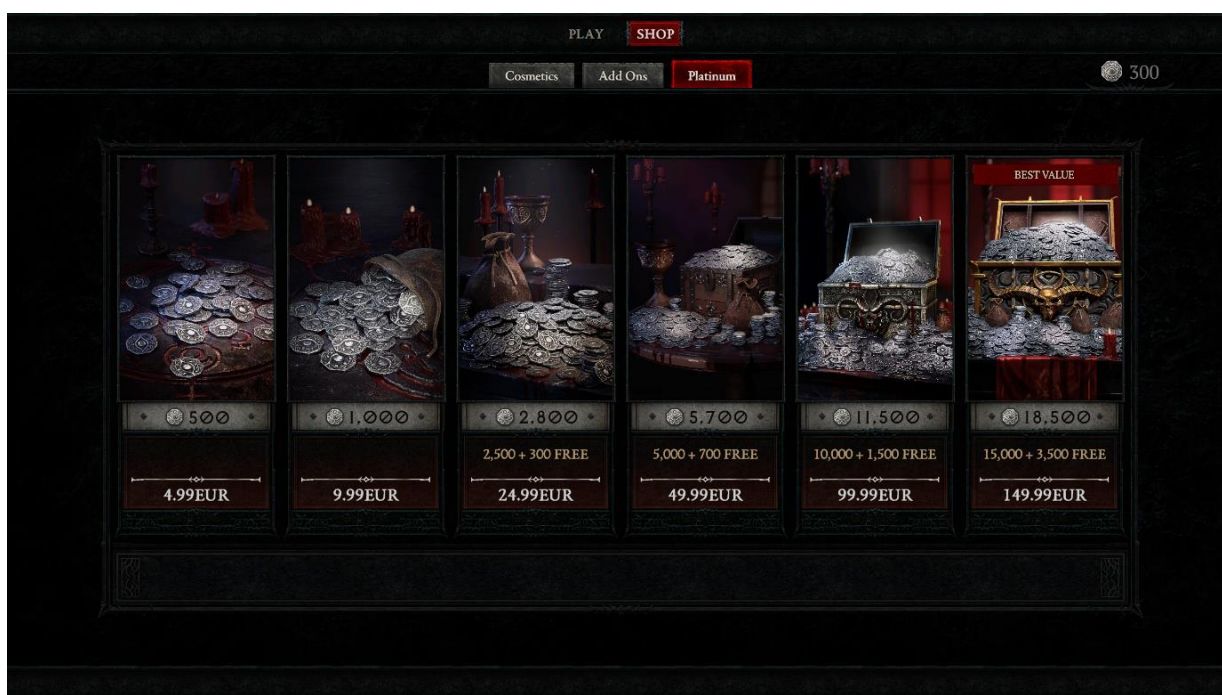
The contentious practices highlighted in this report are suspected **to be widespread infringements with a Union dimension of the UCPD, CRD and UCTD.**

It is noteworthy that the problems highlighted in this alert **are sectorial and systemic.** The list of traders above should therefore not be seen as exhaustive.

<sup>44</sup> Due to the platform nature and the diverse user-generated content of Roblox, the game does not have an age rating but has been assigned the PEGI “!” rating, which stands for “Parental Guidance Recommended”. PEGI, What Do the Labels Mean, <https://pegi.info/what-do-the-labels-mean>.

## 2.2 Activision Blizzard: *Diablo IV*

Game Identity card	
Name	<b>Diablo IV</b>
Date	2023
Trader	<b>Activision Blizzard.</b> The company (subsidiary of Microsoft) is among the 10 biggest video game companies in the world. <sup>45</sup>
Available on:	PC as well as PlayStation and Xbox consoles
Type if game	Paid Game
PEGI-rating	PEGI 18
Estimated number of players	Activision Blizzard reportedly sold 12 million copies by August 2023 <sup>46</sup>
Premium in-game currencies necessary to make in-game purchases	' <b>Platinum</b> ', available in bundles from 500 'Platinum' for €4.99 to 18,500 'Platinum' for €149.99

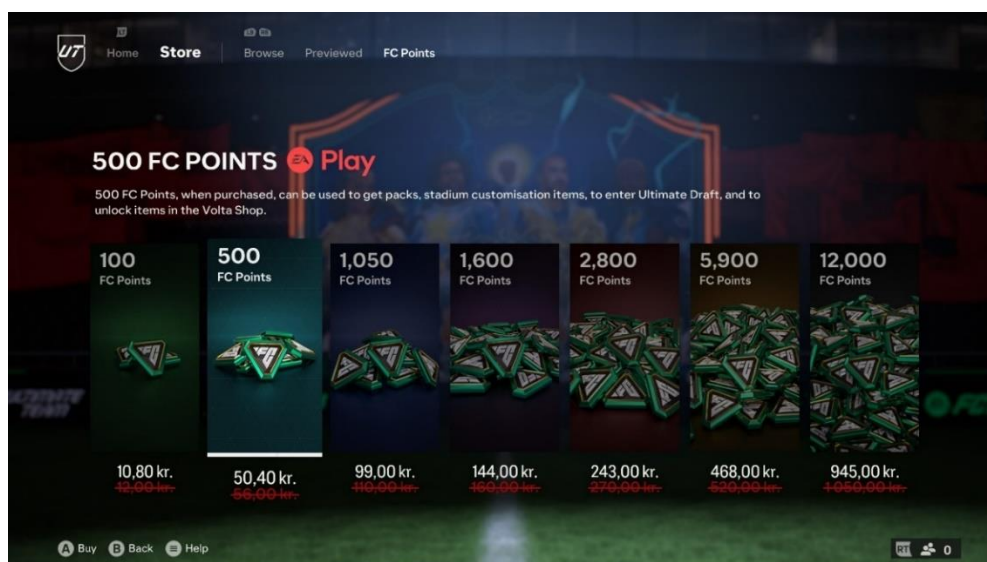


<sup>46</sup> G-Lyfe, Diablo IV Unveils Season of Blood Featuring Actress Gemma Chan at Gamescom 2023, <https://gaminglyfe.com/diablo-iv-unveils-season-of-blood-featuring-actress-gemma-chan-at-gamescom-2023/>.



## 2.3 Electronic Arts: EA Sports FC 24

Game Identity Card	
Name	EA Sports FC (previously FIFA)
Date	2023
Trader	<b>Electronic Arts (EA)</b> is among the top 10 video game companies globally in terms of market capitalisation and revenue. <sup>47</sup>
Available on:	PC and all major video game consoles
Type of game	Paid Game
PEGI-rating	PEGI 3 – for players of all age groups
Estimated number of players	At least 14 million copies <sup>48</sup> and it was among the most financially successful and the most played games in 2023 on the video game marketplace Steam. <sup>49</sup> It is also extremely popular on consoles <sup>50</sup> .
Premium in-game currencies necessary to make in-game purchases	'FC Points', available in bundles from 100 'FC Points' for €0.99 to 12,000 'FC Points' for €99.99.



<sup>47</sup> Statista, Market capitalization of the largest gaming companies worldwide as of April 2024, <https://www.statista.com/statistics/1197213/market-value-of-the-largest-gaming-companies-worldwide/>.

<sup>48</sup> VentureBeat, EA Sports FC hits 14.5M accounts in first month sans FIFA brand, <https://venturebeat.com/games/ea-sports-fc-24-launch-14-5-million-accounts-fifa-rebrand/>.

<sup>49</sup> Steam, Best of 2023, <https://store.steampowered.com/charts/bestofyear/BestOf2023?tab=1>.

<sup>50</sup> Variety, 'EA Sports FC' Pushes Electronic Arts to Record \$1.7 Billion in Live Services Net Bookings in Year-End Quarter <https://variety.com/2024/gaming/news/ea-sports-fc-electronic-arts-earnings-1235890705/>.



## 2.4 Epic Games: Fortnite

Game Identity card	
Name	<b>Fortnite</b>
Date	Since 2017
Trader	<b>Epic Games</b> is among the top 10 video game companies globally in terms of market capitalisation and revenue. <sup>51</sup>
Available on	Fortnite is a free-to-play game that proposes in-game purchases to consumers. It is available on PC and all major video game consoles as well as mobile operating systems (iOS and Android).
Type of games	Free-to-Play Game
PEGI-rating	PEGI 12. Most of the game players are under 24 but it is estimated that many children under 12 play the game by providing a false date of birth when registering. <sup>52</sup>
Estimated number of players	Over 500 million registered players
Premium in-game currencies necessary to make in-game purchases	' <b>V-Bucks</b> ', available in bundles from 1,000 'V-Bucks' for €8.99 to 13,500 'V-Bucks' for €89.99.

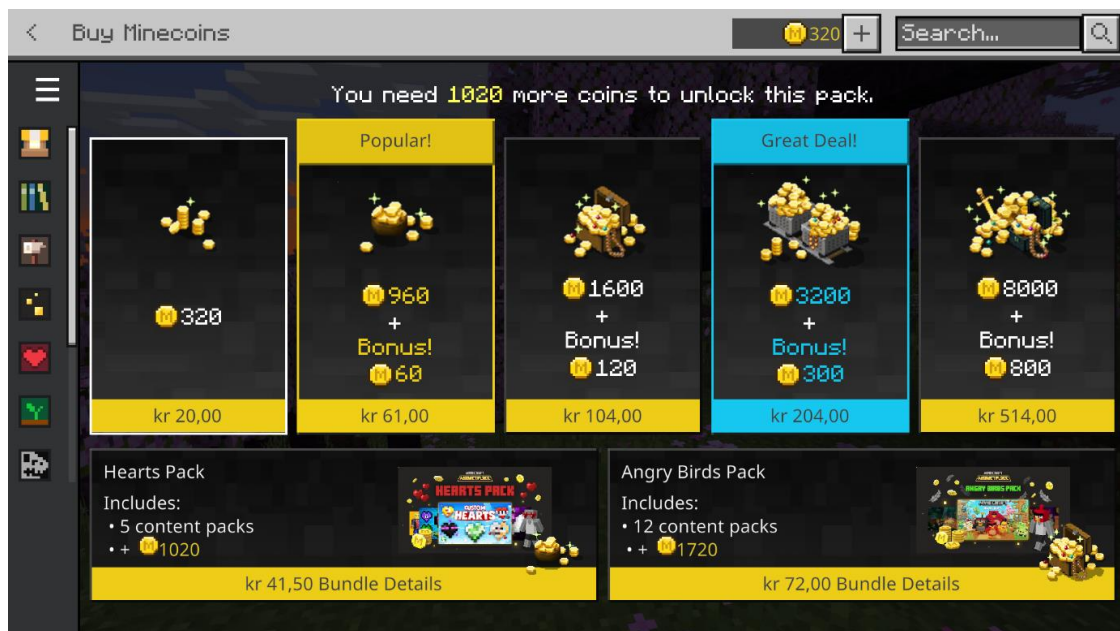


<sup>51</sup> Statista, Market capitalization of the largest gaming companies worldwide as of April 2024, <https://www.statista.com/statistics/1197213/market-value-of-the-largest-gaming-companies-worldwide/>.

<sup>52</sup> Demandsage, Fortnite Statistics 2024 (Active Players, Revenue), <https://www.demandsage.com/fortnite-statistics/>.

## 2.5 Mojang Studios: *Minecraft*

Game Identity card	
Name	<b>Minecraft</b>
Date	Since 2009
Trader	<b>Mojang Studios</b>
Available on:	Available for desktop computers, PlayStation, Xbox, Switch iOS and Android.
Type of game	Paid Game
PEGI-rating	PEGI 7 (primarily young players with 21% of players being younger than 15 and another 23% between 15 and 21 years of age. <sup>53</sup> )
Estimated number of players	It is the best-selling video game of all time, having sold more than 300 million copies by 2023. <sup>54</sup> By 2024, it will have about 160 million monthly active players worldwide.
Premium in-game currencies necessary to make in-game purchases	' <b>Minecoins</b> ' available in bundles from 320 'Minecoins' for €1.99 to 8,800 'Minecoins' for €59.99.

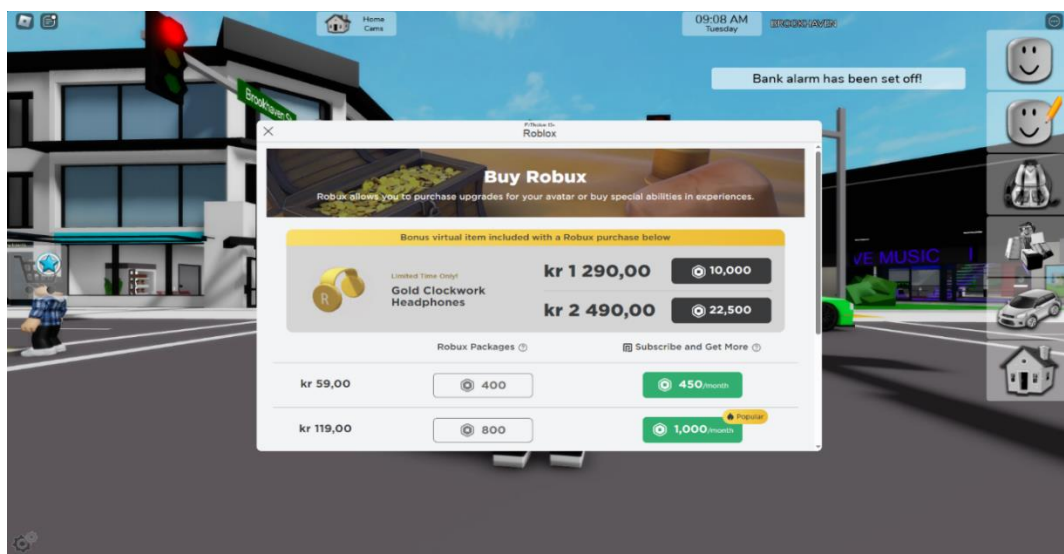


<sup>53</sup> Demandsage, 25 Minecraft Statistics For 2024 (Users, Servers, & More), <https://www.demandsage.com/minecraft-statistics/>.

<sup>54</sup> Windows Central, Minecraft crosses 300 million copies sold as it prepares to celebrate its 15th anniversary, <https://www.windowscentral.com/gaming/minecraft/minecraft-crosses-300-million-copies-sold-as-it-prepares-to-celebrate-its-15th-anniversary>.

## 2.6 Roblox Corporation: *Roblox*

Game Identity card	
Name	<b>Roblox</b>
Date	2006
Trader	<b>Roblox Corporation</b> (among the 10 largest video game companies in the world in terms of market capitalisation) <sup>55</sup> Roblox Corporation develops and publishes only one game, the free-to-play game Roblox
Available on:	Available on PC, mobile devices and PlayStation and Xbox consoles
Type of Game	Free-to-Play
PEGI-rating	Due to this user-generated content, it does not have a PEGI age rating but a PEGI “!” rating, which stands for “Parental Guidance Recommended” <sup>56</sup> . However, it targets primarily young players: over 40% of its players are below 13.
Estimated number of players	By 2024, more than 210 million monthly active users are expected.
Premium in-game currencies necessary to make in-game purchases	<b>‘Robux’ is available</b> in bundles from 400 ‘Robux’ for €5.99 to 22,500 ‘Robux’ for €239.99.



<sup>55</sup> Statista, Market capitalization of the largest gaming companies worldwide as of April 2024, <https://www.statista.com/statistics/1197213/market-value-of-the-largest-gaming-companies-worldwide/>.

<sup>56</sup> See PEGI, What Do the Labels Mean, <https://pegi.info/what-do-the-labels-mean>.

## 2.7 Supercell: Clash of Clans

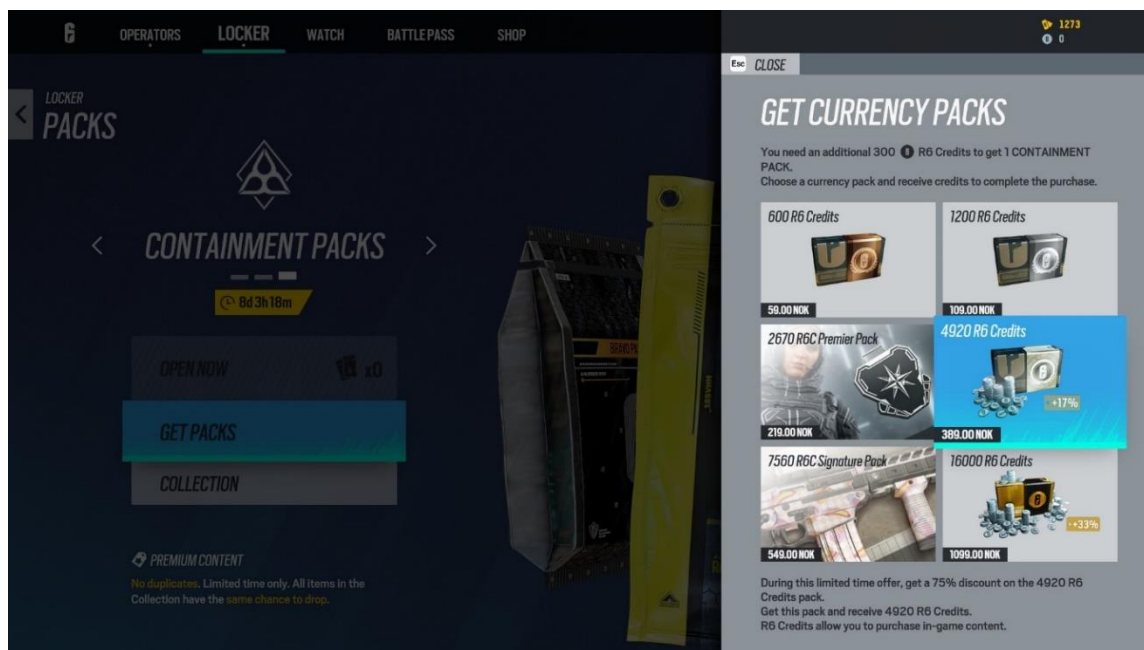
Game Identity card	
Name	<b>Clash of Clans</b>
Date	Since 2012
Trader	<b>Supercell</b>
Available on	Android and Apple mobile devices
Type of Game	Free-to-Play
PEGI-rating	PEGI 7
Estimated number of players	Downloaded more than 500 million times on Android and is estimated to have over 70 million active players. <sup>57</sup>
Premium in-game currencies necessary to make in-game purchases	<b>'Gems'</b> , available in bundles from 80 'Gems' for €1.19 to 14,000 'Gems' for €119.99.



<sup>57</sup> Business of Apps, Clash of Clans Revenue And Usage Statistics (2024), <https://www.businessofapps.com/data/clash-of-clans-statistics/>.

## 2.8 Ubisoft: Tom Clancy's Rainbow Six Siege

Game Identity card	
Name	Tom Clancy's Rainbow Six Siege
Date	2015
Trader	Ubisoft (the largest video game publisher in Europe)
Available on	Available on PC, PS4, PS5, Xbox Series, Xbox One.
Type of Game	Paid Game
PEGI-rating	PEGI 18
Estimated number of players	Among the top 10 e-sports games in terms of number of professional players and global prize money. <sup>58</sup> It has at least 70 million players worldwide <sup>59</sup> and 8 years after it was released, it is among the most financially successful and most-played games on the gaming platform Steam in 2023. <sup>60</sup>
Premium in-game currencies necessary to make in-game purchases	'R6 Credits' available in bundles from 600 'R6 Credits' for €4.99 to 16,000 'R6 Credits' for €99.99.



<sup>58</sup> Esports.net, Top 10 Esports Games – What Are the Biggest Paying Esports in 2024?, <https://www.esports.net/news/top-10-esports-games/>.

<sup>59</sup> PC Games, Rainbow Six Siege player count tops 70 million, <https://www.pcgamesn.com/rainbow-six-siege/player-count>.

<sup>60</sup> Steam, Best of 2023, <https://store.steampowered.com/charts/bestofyear/BestOf2023?tab=1>.

# 3. How premium in-game currencies confuse consumers: a legal assessment

## 3.1 Lack of clear pre-contractual information about prices

### ► Relevant legal basis

#### Article 6(1)(e) CRD<sup>61</sup>:

1. Before the consumer is bound by a distance or off-premises contract or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:  
[...]  
(e) the total price of the goods or services inclusive of taxes, [...];

#### Article 7(4)(c) UCPD<sup>62</sup>:

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.  
[...]
4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:  
[...]  
(c) the price inclusive of taxes [...]

#### Article 5(3) UCPD:

3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. [...].

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<sup>61</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>62</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').



## ► Application to the contentious practices (supporting evidence: figures 1 to 7, Annex 1)

In all video games covered by this action, the price of the digital content that consumers can purchase with their premium in-game currencies is **only displayed in the in-game premium currency with no further correspondence in real currency** (euros or other relevant national currencies). We consider this to infringe Art. 6(1)(e) CRD, as traders do not provide sufficient information about the price in a clear and comprehensible manner. Moreover, the absence of price displayed in real currency is a misleading omission under Art. 7(4)(c) UCPD, as the UCPD guidance confirms<sup>63</sup>:

‘When offering in-game purchases, traders must ensure that they comply with the information obligations in Article 7 UCPD and the CRD. The main characteristics of the product must be clearly described, and **the prices of virtual items must be clearly and prominently displayed (also) in real currency**. If the price cannot reasonably be calculated in advance, the trader should indicate the manner in which the price is to be calculated. The prices of virtual items must be clearly and prominently displayed in real currency when the commercial transaction takes place.’ (emphasis added).

The CPC-Network upheld this approach in its coordinated action against **TikTok**.<sup>64</sup> The authorities highlighted that displaying an equivalence in real currency is necessary before any in-app purchases are made with virtual currencies. Consequently, TikTok committed to display prominently “an estimate of the unit price per [TikTok] Coin in local currency”:<sup>65</sup>

‘When an EEA user first enters LIVE to send a Gift, display prominent text at the top of the Gifting panel that provides an estimate of the unit price per Coin in local currency and invites the user to access more information about the costs of Gifts including the manner in which the price of Gifts can be calculated.’ (TikTok commitments).

Similarly, in June 2024, the Belgian Economic Inspectorate launched an investigation into festival ‘tokens’ and has indicated that festival organisers must display “*the amount in euros in a font as large and clear font as the prices in the event coins, and in the same field of view*”.<sup>66</sup>

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<sup>63</sup> Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (Text with EEA relevance), C/2021/9320. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29>

<sup>64</sup> [<sup>65</sup> See TikTok commitments, 2022, \[https://commission.europa.eu/document/download/bb70bfd5-7a26-471a-b265-7a59f0426a57\\\_en?filename=2022.06.15\\\_tiktok\\\_updated\\\_commitments.pdf\]\(https://commission.europa.eu/document/download/bb70bfd5-7a26-471a-b265-7a59f0426a57\_en?filename=2022.06.15\_tiktok\_updated\_commitments.pdf\)](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines_en#:~:text=The%20European%20Commission%20and%20the,breaches%20of%20EU%20consumer%20rights., last consulted 8 July 2024.</a></p></div><div data-bbox=)

<sup>66</sup> [Het gebruik van eigen betaalmiddelen op evenementen: guidelines voor organisatoren | FOD Economie \(fgov.be\)](https://www.fod.economie.fgov.be/nl/mededelingen/het-gebruik-van-eigen-betaalmiddelen-op-evenementen-guidelines-voor-organisatoren), last consulted 8 July 2024.

## 3.2 In-game premium currencies materially distort the economic behaviour of consumers, especially vulnerable ones

### ► Relevant legal basis

#### Article 5(2) and (3) UCPD:

2. A commercial practice shall be unfair if:
  - (a) it is contrary to the requirements of professional diligence, and
  - (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.
  
3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. [...].

### ► Application to the contentious practices (supporting evidence: Figures 1 to 7 in Annex 1)

For the reasons set out below, we suspect that traders' use of in-game premium currencies may materially distort the economic behaviour of consumers. These practices therefore constitute unfair commercial practices. As explained in Sections 1.4 and 2, having in mind the very high number of children and teenagers playing these video games, the CPC-Network **should rely on the vulnerable consumer benchmark when reviewing** contentious practices.

- (i) *Premium in-game currencies make real prices less tangible for consumers and lower their "pain-of-paying"*

According to behavioural findings, consumer transactions trigger what researchers call a '**pain-of-paying**' effect.<sup>67</sup> This refers to the negative emotional response or discomfort that individuals experience when using their monetary resources to make a purchase, as this means a loss in their financial assets. Research into 'pain-of-paying' has shown that when payments are made with real money, consumers experience an aversion to payment.<sup>68</sup> Conversely, when they pay by using more abstract forms of payment (e.g. fidelity cards, vouchers, or virtual credits), or when

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<sup>67</sup> Among many papers on the pain-of-paying effect, see: Prelec D, Loewenstein G. 1998. The red and the black: mental accounting of savings and debt. *Mark Sci.* 17(1):4–28. The Decision Lab, Pain of Paying, <https://thedecisionlab.com/reference-guide/psychology/pain-of-paying>; Prelec D, Simester D. 2001. Always leave home without it: a further investigation of the credit-card effect on willingness to pay. *Mark Lett.* 12(1):5–12.

<sup>68</sup> Ariely, D., Kreisler, J., 2018, *Small change: Money mishaps and how to avoid them*, Pan Macmillan.



the transaction is less tangible in any other form, their pain of paying is likely to lower<sup>69</sup> and therefore they tend to spend more.<sup>70</sup> **In-game premium currencies exploit this behavioural trait as their objective is to lower consumers' 'pain-of-paying' by obscuring the real cost of the digital content they purchase.**<sup>71</sup> As the Netherlands Authority for Consumers and Markets (ACM) has highlighted: 'businesses, by using these currencies, deliberately or in effect, disconnect consumers from the awareness that they are spending actual money'.<sup>72</sup>

(ii) *Real prices in euros (or other currencies) cannot be calculated easily*

Consumers cannot easily find the information that would allow them to calculate or convert the price of premium in-game currencies into real currencies. This is because:

- Consumers may need to apply complex exchange rates (see for instance the case of Roblox<sup>73</sup>).
- The information needed to calculate the unit price of premium in-game currency may not be easily accessible to them: often the information is available when consumers buy bundles of premium in-game currency or from their transaction history (when available).
- Premium in-game currencies are almost always sold in bundles and the prices vary depending on the size of the bundle, as shown in the table below.<sup>74</sup>

Consumers choosing smaller bundles will usually (but not always) pay a higher unit price than if they decide to buy bigger bundles. The conversion rate between real currency and premium in-game currency remains constant only if consumers buy the same bundle (and provided that the trader does not increase the prices). **If consumers purchase bundles of different sizes, the unit price varies too much and cannot be calculated.**

The table below also shows how traders may use premium in-game currencies to distort consumers' reasonable expectation that buying a larger bundle allows them to enjoy a more advantageous unit price. The example of *Minecraft* is important as it is the only game where the unit price of the biggest and most expensive bundle is higher compared to the least expensive one.

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<sup>69</sup> Raghurir, P., Srivastava, J., 2008, Monopoly money: the effect of payment coupling and form on spending behavior, *Journal of experimental psychology: Applied*, 14(3), p. 213. Soman D. 2003. The effect of payment transparency on consumption: quasi-experiments from the field. *Mark Lett.* 14(3):173–183; Thomas M, Desai KK, Seenivasan S. 2011. How credit card payments increase unhealthy food purchases: visceral regulation of vices. *JConsum Res.* 38(1):126–139; Eve H. Limbrick-Oldfield, Candy Chua, Natalie Cringle, Kent MacDonald, Mario A. Ferrari, Ke Zhang & Luke Clark (2022) Cashless gambling and the pain of paying: effects of monetary format on slot machine gambling, *Addiction Research & Theory*, 30:3, 220-230

<sup>70</sup> Lapuz, J., Griffiths, M. D., 2010, The role of chips in poker gambling: an empirical pilot study, *Gambling Research: Journal of the National Association for Gambling Studies (Australia)*, 22(1), p. 34.

<sup>71</sup> Ariely, D., Kreisler, J., 2018, *Small change: Money mishaps and how to avoid them*, Pan Macmillan.

<sup>72</sup> ACM, 2022, Non-paper EU Fitness Check on Digital Fairness: Protecting Consumers in Digital Environments, [https://www.acm.nl/system/files/documents/acm-reactie-op-eu-fitness-check-on-digital-fairness\\_0.pdf](https://www.acm.nl/system/files/documents/acm-reactie-op-eu-fitness-check-on-digital-fairness_0.pdf).

<sup>73</sup> See Annex 1 – Figure 5 Buying virtual items in Roblox – Price shown in 'Robux'.

<sup>74</sup> The complete overview of all available bundles for targeted games and their respective unit prices is provided in the Annex.

Overview of the unit price of premium virtual currencies (table designed by BEUC)

Game	Virtual currency	Smallest bundle			Largest Bundle			Surcharge least expensive option
		Price	Currency obtained	Price for 1 currency	Price	Currency obtained	Price for 1 currency	
<b>Diablo IV</b>	Platinum	€4.99	500	€0.0100	€149.99	18,500	€0.0081	<b>+23%</b>
<b>EA Sports FC 24</b>	FC Points	€0.99	100	€0.0099	€99.99	12,000	€0.0083	<b>+19%</b>
<b>Fortnite</b>	V-Bucks	€8.99	1,000	€0.0090	€89.99	13,500	€0.0067	<b>+35%</b>
<b>Minecraft</b>	Minecoins	€1.99	320	€0.0062	€59.99	8,800	€0,0068	<b>-7%</b>
<b>Roblox</b>	Robux	€5.99	400	€0.0150	€239.99	22,500	€0.0107	<b>+40%</b>
<b>Clash of Clans</b>	Gems	€1.19	80	€0.0149	€119.99	14,000	€0.0086	<b>+74%</b>
<b>Rainbow Six Siege</b>	R6 Points	€4.99	600	€0.0083	€99.99	16,000	€0.0062	<b>+33%</b>

(iii) *Unfair mismatches between the size of premium in-game currency bundles and the prices of virtual items*

None of the games included in this alert allows consumers to buy individual units of premium in-game currency. Consumers have no other choice but to buy bundles, the size of which is pre-determined by traders. This means that consumers cannot buy the exact amount of premium in-game currencies that is needed to purchase specific digital content in-game.

As shown in the table below, the least expensive premium in-game currency bundles are typically slightly more expensive than the price of many digital items. As a result, after purchasing virtual items, consumers are often left with a small amount of premium in-game currency that is of no use for them unless they top it up and buy another bundle.

This triggers a vicious cycle where consumers must **continuously buy more premium in-game currency** to be able to spend the small amounts remaining after the purchase of the virtual items. As research has pointed out:

‘Item pricing and the amount of in-game currency that players can purchase is rarely aligned, leaving players with extra currency that either stays unspent or can be used to save up for the next purchase. [...] encouraging snap decisions as opposed to deeper thinking (due to intentionally cognitively taxing currency conversion rates)’.<sup>75</sup>

<sup>75</sup> Behavioral design in video games. A roadmap for ethical and responsible games that contribute to long-term consumer health and well-being, Trimbos Instituut, 2021. <https://www.trimbos.nl/wp-content/uploads/2021/12/AF1965-Behavioral-design-in-video-games.pdf>, last consulted on 8 July 2024. (Fortnite case study)

*Mismatch between the size of the virtual currency bundle and the price of the virtual item  
(Table designed by BEUC)*

Game	Premium virtual currency	Name of digital content	Price for content (in virtual currency)	Smallest available currency bundle <sup>76</sup>	Surcharge
<b>Diablo IV</b>	Platinum	‘Vulgar Tongues’	1,400	1,500	<b>7%</b>
<b>EA Sports FC 24</b>	FC Points	‘Wee 80+ Players Pack’	50	100	<b>100%</b>
<b>Fortnite</b>	V-Bucks	‘Battle Pass Chapter 5 Season 2’	950	1,000	<b>5%</b>
<b>Minecraft</b>	Minecoins	‘Cute Kitties’	160	320	<b>100%</b>
<b>Roblox</b>	Robux	‘Mage Animation Package’	250	400	<b>60%</b>
<b>Clash of Clans</b>	Gems	‘400 Elixir’	2	80	<b>3,900%</b>
<b>Rainbow Six Siege</b>	R6 Points	‘Containment Pack’	300	600	<b>100%</b>

The difference between the price indicated in the in-game premium currency and the price indicated in EUR (or other relevant fiat currencies) can be very significant. See the example of Clash of Clans where consumers must buy 80 ‘Gems’ to purchase an item worth 2 ‘Gems’ (table above).

In some cases (Figures 1 and 2), traders give consumers the possibility to buy premium in-game currency bundles that are seemingly adapted to the prices of digital content. Yet, this remains an illusion as bundles **do not fully match the price of virtual items, and still leave consumers with a few dozen units of unspent but paid virtual currency.**<sup>77</sup>

<sup>76</sup> Including combinations of several bundles, if closer to the price of the virtual item than any single bundle.

<sup>77</sup> Minecraft even shows a price in real currency, but this price corresponds to the in-game premium currency bundle, not the digital content, thereby adding further confusion. In these cases, it must be considered that the real price of the ‘Farming’ content in Minecraft is 1,370 ‘Minecoins’ instead of the 1,340 that are advertised, and the real price of the ‘Teleport’ in Roblox is 240 ‘Robux’ instead of the 200 that are advertised.

Figure 1: Example of overcharging with Minecraft

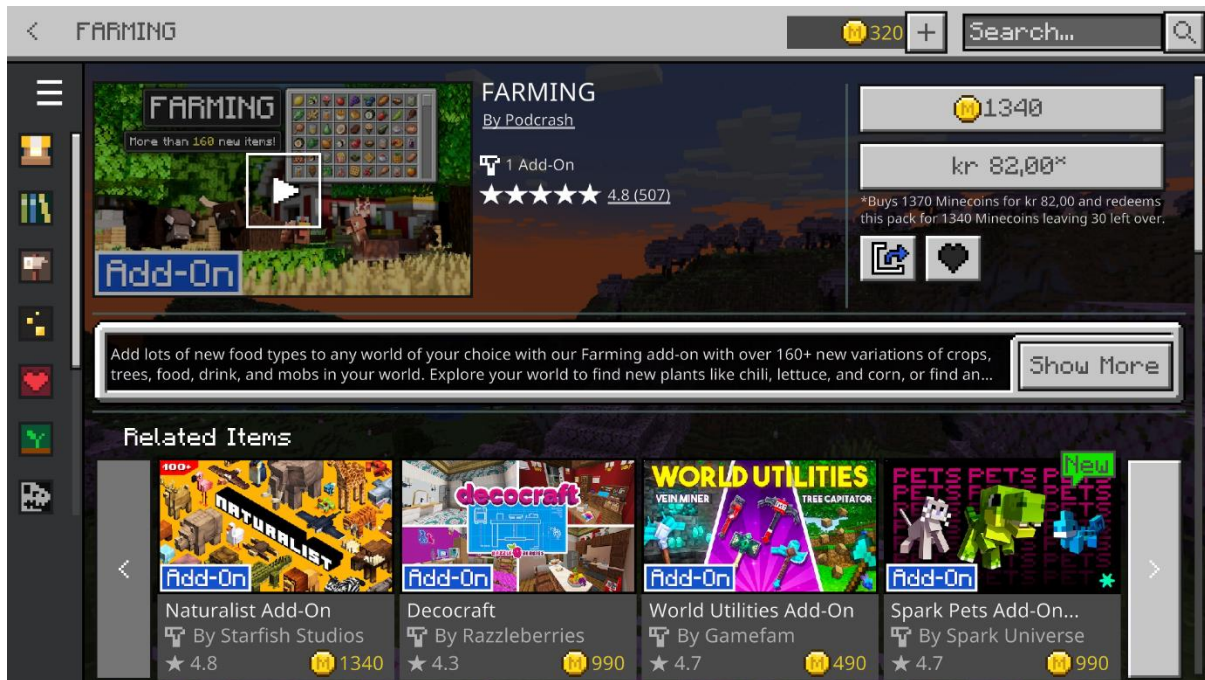
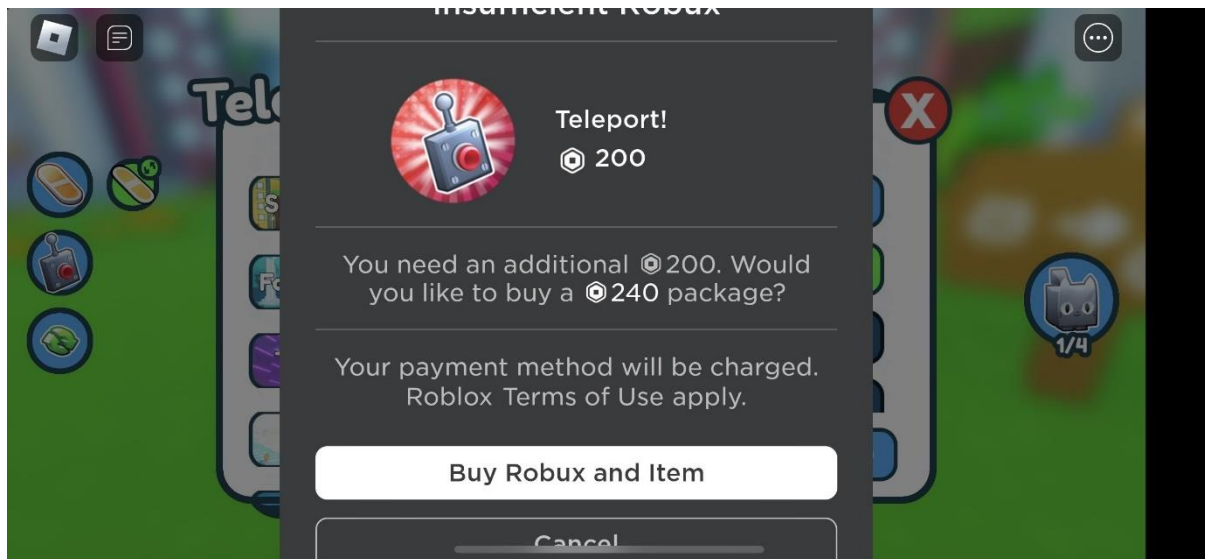


Figure 2: Example of overcharging with Roblox



## 4. Lack professional diligence by traders to better protect children and teenagers from unfair in-game purchases

### ► Relevant legal basis

#### Article 2(h) UCPD:

“ ‘professional diligence’ means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader’s field of activity.”

#### Article 5(2) UCPD:

2. A commercial practice shall be unfair if:
  - (a) it is contrary to the requirements of professional diligence, and
  - (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers”.

#### Article 5(3):

“3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.”

### ► Application to the contentious practices

The concept of professional diligence as laid down in the UCPD imposes on traders a standard of conduct. In the gaming sector, traders have a specific duty of professional diligence vis-à-vis **children as they can expect that their games are widely played by minors**.<sup>78</sup> Traders should therefore take proactive measures to protect young consumers against impulsive or unwanted in-game purchases, particularly those involving in-game premium currencies.

All the games covered in this alert allow by default consumers to make in-game purchases (including through premium in-game currency). Consumers must opt-out if they wish to deactivate this feature.

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<sup>78</sup> See sections 1.4 and 2.

As highlighted earlier, several games targeted by this complaint have a PEGI age rating of 12 or lower. As a consequence, younger consumers remain largely exposed to all sorts of in-game purchases, including in-game premium virtual currencies. In March 2024, Sveriges Konsumenter published a report focusing on in-app/in-game purchases marketed towards children. The report reviewed 40 of the most popular free-to-play games in the App Store and Google Play. The report shows that in-game purchase is present in 30 out of 40 App Store games, and 35 out of 40 games on Google Play. The prices of individual purchases range from €0,50 to €232. The age recommendations in the app stores fail to consider the availability of in-game purchases, and most games have an age rating as low as PEGI 3+. Generally, traders tend to use disclaimers in their terms and conditions to limit their liability for the use of their games by underaged consumers.<sup>79</sup> While some app stores or game developers have started to develop protective measures, they still have today major shortcomings. Examples of massive in-game and in-app spending continue to be numerous and show the limits of the existing safeguards.<sup>80</sup>

## 5. Unfair contract terms regulating premium in-game currency

### 5.1. Unfair terms waiving consumer rights

The lack of price transparency accompanying premium in-game currency comes **with several terms restricting consumers' rights**. Among those terms, one may highlight in particular (but non-exhaustively):

- Terms giving unilateral rights to traders to withdraw game features at any moment, thus exposing consumers to lose their content at any time (including their paid premium in-game virtual currencies).
- Terms granting traders a right to unilaterally modify the value of in-game items (including premium in-game virtual currencies).
- Terms rejecting consumers' right to legal guarantee or preventing consumers' withdrawal or their right to a refund.

#### 5.1.1. Unfair terms allowing traders to unilaterally modify or withdraw game features

##### ► Relevant legal basis:

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<sup>79</sup> <https://www.sverigeskonsumenter.se/media/bmaezcoy/ingen-lek.pdf>

<sup>80</sup> See Kids Who Wasted Thousands Of Dollars On Gaming, Read More: <https://www.grunge.com/29299/kids-wasted-thousands-dollars-parents-money-games/>, February 2023, last consulted on 8 July 2024.

### Article 3 UCTD:

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.  
[...]
3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.

#### Point (f) of its Annex

Authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract.

#### Point (i) of its Annex

Irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract.

#### Points (j) of its Annex

Enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;

#### Points (k) of its Annex

Enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided.

## ► Application to the contentious games' terms & conditions (supporting evidence: Annex II- Section 1<sup>81</sup>)

Terms and Conditions applying to the video games covered in this alert allow traders to unilaterally modify or withdraw key game features, including in-game premium currencies, without valid reasons and/or without systematically informing consumers or without granting them any refund rights. As such, they expose consumers to **unilateral modification of their contracts with the possibility** of losing their access to the contents they have purchased<sup>82</sup>. As part of its coordinated action against several social media platforms in 2013-2014, the CPC-Network already stressed that “any change in the terms of a contract that has not been, given with a reasonable notice, and that binds the consumer, may be considered unfair”.<sup>83</sup> The risks of unilateral modification by traders are far from being hypothetical. In November 2021, the company Niantic announced their decision to discontinue the game Harry Potter: Wizards

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<sup>81</sup> Annex II - Unfair terms and conditions applied by game companies waiving consumers statutory rights or to maximise in game spending

<sup>82</sup> If their accounts are, for instance, erroneously suspended. In practice, there are various reasons why an account may be banned. For example, some algorithms used to detect cheating players may sometimes report on players who were simply in proximity to a cheater or who received in-game benefits from such cheats

<sup>83</sup> Common position of national authorities within the CPC-Network concerning the protection of consumers on social networks



Unite<sup>84</sup> and the concerned consumers did not benefit from any refund.<sup>85</sup> In late 2023, a similar situation occurred with the game “The Crew” by Ubisoft.<sup>86</sup> In addition, there are also numerous examples of consumers discovering that their in-game purchases have been deleted because the service had erroneously decided to ban access to their accounts.<sup>87</sup>

## 5.1.2. Unfair terms limiting consumer statutory rights

### ► Relevant legal basis:

#### Article 3 UCTD

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.  
[...]
3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.

#### Points (b) of its Annex

Inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him.

#### Point (d) of its Annex

Permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;

#### Point (f) of its Annex

Authorizing the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract.

#### Point (q) of its Annex

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<sup>84</sup> Harry Potter: Wizards Unite to shut down January 2022, <https://www.rtb.be/article/clap-de-fin-pour-le-jeu-harry-potter-wizards-unite-10926014>

<sup>85</sup> “Niantic has said that there will be no refunds on in-game items and players have until the end of January to spend any remaining in-game currency”, <https://www.bbc.co.uk/newsround/59150019#:~:text=Niantic%20has%20said%20that%20there,events%20for%20payers%20throughout%20November.>

<sup>86</sup> An update from the Crew, <https://archive.ph/20240120062339/https://www.ubisoft.com/en-gb/game/the-crew/the-crew-2/news-updates/mOR3tvizskxfeQCUKxhOV/an-update-on-the-crew>, last consulted 8 July 2024.

<sup>87</sup> “This is what happens when your Nintendo Switch account gets banned”, Sean Buckley <https://www.cnet.com/tech/gaming/this-is-what-happens-when-your-nintendo-switch-account-gets-banned-fortnite/>, last consulted 8 July 2024.



Excluding or hindering the consumer's right to take legal action or exercise any other legal remedy [...].

## ► **Application to the contentious games' terms & conditions (supporting evidence: Annex II – Section 1 <sup>88</sup>)**

Several traders targeted in this alert (Electronic Arts (EA), Mojang Studio, Roblox, Supercell, or Ubisoft)<sup>89</sup> limit consumers' statutory rights. This includes their right of withdrawal, their rights to benefit from a legal guarantee and/or to obtain refunds, where relevant.

In the 2013-2014 coordinated action against social media platforms, the CPC-Network confirmed that consumers “should not be deprived of rights that arise from the non-performance or the inadequate performance by the operator of its contractual or statutory obligations under EU law, such as the consumer's right to cancel the contract. Any term that requires the waiver of the aforementioned category of rights can be found in breach of EU consumer legislation”.<sup>90</sup> Moreover, in 2022, as a result of a CPC-Network’s coordinated action, TikTok committed to adapting its virtual items policy by inserting a withdrawal period applicable to purchases made through virtual currencies and to clarify that users also benefit from a right to a legal guarantee under the Digital Content Directive.<sup>91</sup>

**The same line of reasoning should apply in the area of video games.** It should not be permissible for traders to unilaterally change the scope of contracts without valid reasons and without bearing any responsibility towards consumers. Traders should also not unilaterally waive consumer rights of withdrawal or legal guarantee or exclude consumer refund rights in all circumstances.

## 5.2. Unfair terms to “personalise consumers' gaming experience”

### ► **Relevant legal basis**

#### **Article 5 UCTD:**

In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. [...].

#### **Article 6(1)(a) and (ea) CRD:**

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<sup>88</sup> Annex II - Unfair terms and conditions applied by game companies waiving consumer statutory rights or to maximise in game spending

<sup>89</sup> See Annex II – Section 1 to see the contested clauses.

<sup>90</sup> Common position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

<sup>91</sup> See TikTok commitments 27 and 28, [https://commission.europa.eu/document/download/bb70bfd5-7a26-471a-b265-7a59f0426a57\\_en?filename=2022.06.15\\_tiktok\\_updated\\_commitments.pdf](https://commission.europa.eu/document/download/bb70bfd5-7a26-471a-b265-7a59f0426a57_en?filename=2022.06.15_tiktok_updated_commitments.pdf)

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;

[...].

(ea) where applicable, that the price was personalised on the basis of automated decision-making; [...]

#### **Article 7(4)(a) UCPD:**

In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

(a) the main characteristics of the product, to an extent appropriate to the medium and the product [...];

#### **Article 5 UCPD :**

1. Unfair commercial practices shall be prohibited.
2. A commercial practice shall be unfair if:
  - (a) it is contrary to the requirements of professional diligence, and
  - (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.
3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

### **5.3. Application to the contentious games' terms & conditions (supporting evidence: Annex II – Section 2<sup>92</sup>)**

Traders collect personal data in video games to provide consumers with “relevant content” or “offers” and to shape what the industry calls their “gaming experience”. Several traders targeted by this alert (e.g. Activision Blizzard, Electronic Arts, Epic Games, Mojang Studio, Roblox, Supercell, Ubisoft) grant themselves the power to collect consumers’ personal data (for instance information about the length of playing time, in-game purchases made etc.) without properly informing consumers about the exact purpose of the data collection and subsequent processing.

The use of vague and misleading wording in traders’ policies (such as “customise your user experience”, “personalise our services”, “to enhance your experience”, “personalising your

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<sup>92</sup> Annex II - Unfair terms and conditions applied by game companies waiving consumer statutory rights or to allow to “personalize” or “customize” consumers gaming experience.

gaming experience”, and others<sup>93</sup> does not allow consumers to understand what kind of services and game content are personalised, how exactly they are personalised, and to what extent.

While genuine and legitimate gameplay mechanisms are personalised in video games and can legitimately be considered as being part of consumers' gaming experience (for instance adapting the game's difficulty level to the progress of players), the broad and non-specific wording currently used by traders may also facilitate possible unfair and manipulative practices (e.g.: personalisation of prices of in-game purchases or of the value of in-game premium virtual currencies, the reward consumers can receive when opening loot boxes, slowing down players' progression in the game to encourage in-game spending to avoid grinding<sup>94</sup> etc.). Traders who do not provide consumers with a clear, precise and exhaustive list of categories of personal data collected and the purposes for which they are processed simply prevent consumers from fully understanding key elements of the contract. The risk of manipulation by traders of lootboxes' rewards is not hypothetical. For instance, the Korea Fair Trade Commission (KFTC) has imposed a fine of \$8.9 million on Nexon, for deceptive practices manipulating drop rates for certain high-value Cubes without properly informing players in its game MapleStory.<sup>95</sup>

We believe that traders' terms grant themselves the power to use personal data at any time, with the aim to “customise gaming experience” (and similar wordings)<sup>96</sup>:

- Are not drafted in plain and intelligible language as required under Art. 5 UCTD. All consumers, including children and teenagers, should be able to understand the wording used.
- Breach Art. 6(1)(a) CRD that requires traders to inform consumers, before being bound by a contract, about the main characteristics of the product or service in a clear and comprehensive way.
- Fail to provide sufficient information about the personalisation of in-game purchases in a clear, unambiguous and timely manner, and therefore also constitute a misleading omission and should be considered as an unfair commercial practice under Article 7(4)(a) UCPD.

Considering the significant number of vulnerable consumers playing video games, traders should be particularly diligent when informing users about data collection and personalisation practices. This constitutes therefore a lack of professional diligence as foreseen under Art.5 UCPD.

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<sup>93</sup> Idem

<sup>94</sup> The act of performing repetitive tasks to overcome roadblocks to in-game progress is called “grinding” in reference to the repetitive nature of the activity.

<sup>95</sup> The Korean Consumer Protection Authority KFTC alleges that between 2011 and 2021, Nexon covertly lowered the drop rates for certain high-value Cubes without properly informing players. This action is considered a violation of South Korea's Electronic Commerce Act. <https://clutchpoints.com/nexon-publisher-of-maplestory-fined-9-million> , last consulted 8 June 2024.

<sup>96</sup> In addition to the consumer protection directives on which this alert is based, we consider that such vague formulations in traders' privacy policies may also constitute a breach of the General Data Protection Regulation 2016/679 (GDPR), in particular the principles of transparency, specificity and purpose limitation enshrined in Article 5(a) and (b), as well as the principle of informed consent enshrined in Article 6(a) in accordance with Article 4(11).

Finally, where traders personalised the prices of in-game items or the value of the premium in-game currencies thanks to automated decision-making, consumers may not be sufficiently informed about this practice. This may be in breach of Art. 6(1)(ea) CRD.

These unclear terms allowing broad data collection, coupled with little to no protection at all with the terms and conditions exclusions (e.g. no refund entitlement, or exclusion of liabilities in games terms and conditions), have a clear potential to exploit all consumers, adults and young gamers alike and should be deemed unfair and therefore null and void.