

The Consumer Voice in Europe

## CALL FOR EVIDENCE ON AN EU INITIATIVE ON VIRTUAL WORLDS

BEUC's response



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2023-053 - 03/05/2023

## Why it matters to consumers

Consumers may be more and more presented with virtual world services and these products should be designed with consumers best interests in mind.

## Summary

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*BEUC welcomes the opportunity to comment on the Commission's plans to devise a vision on virtual worlds. BEUC urges caution in relation to the hype created by certain industry players around extended reality technologies. The Commission should have an evidence-based approach and conduct an assessment about potential gaps that current and draft EU laws have to effectively protect consumers in emerging tech. It should ensure that consumer organisations are fully involved and consulted in any follow-up action to this feedback consultation.*

### 1. BEUC's preliminary views

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BEUC – The European Consumer Organisation welcomes the opportunity to comment on the Commission's plans to devise a Communication on virtual worlds. Below we would like to comment on different aspects of the call for evidence launched by the European Commission on 3 April 2023<sup>1</sup>.

BEUC would like to urge caution about the EU committing to invest in extended reality technologies, including augmented and virtual reality, without first doing an assessment of the legal framework, gaps, harms and risks identified for consumers and an action plan on what next steps should be undertaken at a regulatory and enforcement level. This is needed before committing to invest large amounts of money on technology that could be largely unused or harmful to consumers.

While there has been a steady and intensive marketing campaign to promote virtual worlds including 'metaverses', the development of virtual worlds is still in its early stages. For example, Decentraland (Meta's biggest competitor) currently averages between 30 and 600 users daily depending on the user estimate.<sup>2</sup> The European Commission has also attempted to host an event in a 'metaverse', with practically no-shows.<sup>3</sup>

Many companies estimate the future use of virtual worlds, but there seems to be little to no evidence backing up the claims that they will in fact be widely used. Meanwhile, the hardware required to access them is very expensive.

There is a discrepancy between the marketing promises of owners of virtual worlds and the reality of what they can introduce. For example, Meta has been advertising new

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<sup>1</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13757-Virtual-worlds-metaverses-a-vision-for-openness-safety-and-respect\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13757-Virtual-worlds-metaverses-a-vision-for-openness-safety-and-respect_en)

<sup>2</sup> <https://www.beyondgames.biz/27417/does-decentraland-really-have-only-30-daily-active-users/>

<sup>3</sup> <https://www.politico.eu/article/eu-threw-e387k-meta-gala-nobody-came-big-tech/>

features like avatar legs,<sup>4</sup> and later issuing a statement that the advertised feature was only a preview of what is to come.<sup>5</sup>

Microsoft also seems to have invested in 'metaverses', but has since cut their teams working on virtual reality and instead seems to be focusing on artificial intelligence (AI) more.<sup>6</sup> Tinder was also trying to create a dating 'metaverse', but ultimately scaled it back after realising it was impossible to know what could or could not work.<sup>7</sup> Similarly, 'metaverses' used for educational purposes seem to struggle with reaching the promised potential.<sup>8</sup>

Therefore, **we recommend the European Commission to carefully evaluate the hype and evidence presented before committing to devote EU resources into this.** It seems premature to commit an investment vision on technology whose impact on society and individuals has not been sufficiently and comprehensively assessed.

If the Commission decides to move forward, it is crucial that closed ecosystems with proprietary systems and detrimental effects on the protection of people's privacy, personal data, cybersecurity, the open internet, fair and contestable markets, among others, are prevented to emerge or get any future EU funding. The respective funding programmes, such as the Digital Europe Programme should be adapted accordingly in their implementing measures.

In addition, **there should be an assessment of the potential risks for consumers when using virtual worlds and the related technology.** EU law needs to be able to address the challenges of emerging technologies so they can truly benefit, not harm, consumers.

The Commission is right in emphasising that current legislation such as the General Data Protection Regulation (GDPR), the Digital Services and Markets Acts, the Unfair Commercial Practices Directive, the Open Internet Regulation, among others, apply and can address some of the challenges posed by virtual worlds. At the same time, it is by no means certain whether these legislations, which have been written without extended reality technologies in mind, will suffice to provide a high level of consumer protection and fully respect other fundamental rights and principles. For example, it is unclear how extended reality technologies can comply with key GDPR principles like data minimisation and data protection by design and by default. The EU consumer law REFIT evaluation is also a good opportunity to include an assessment of the potential risks and future challenges of extended reality technologies in this respect. In any case, for existing EU legislation, emphasis should be put on their effective and swift enforcement and the capacity of regulators and enforcement authorities to undertake such actions.

Moreover, in its upcoming initiative and future steps foreseen in the Communication, the Commission should **assess whether current proposals currently being discussed by co-legislators** such as the AI Act, the proposal for a revision of the Product Liability Directive and the AI Liability Directive proposal, **could be adapted to cater for these technological developments.** Similarly, the Commission should **assess what gaps in EU law exist to effectively protect consumers in extended reality technologies.**

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<sup>4</sup>[https://www.technologyreview.com/2022/10/11/1061144/metaverse-announcements-meta-connect-legs/?truid=&utm\\_term=](https://www.technologyreview.com/2022/10/11/1061144/metaverse-announcements-meta-connect-legs/?truid=&utm_term=)

<sup>5</sup><https://www.bloomberg.com/news/articles/2022-10-18/mark-zuckerberg-ignores-facebook-to-build-his-metaverse?leadSource=uverify%20wall>

<sup>6</sup><https://www.computerworld.com/article/3688433/as-microsoft-embraces-ai-it-says-sayonara-to-the-metaverse.html>

<sup>7</sup><https://techcrunch.com/2022/08/02/tinder-to-kill-crypto-metaverse-plans-amid-match-group-earnings-loss-tinder-loses-its-ceo/>

<sup>8</sup><https://www.ft.com/content/4ea0dccb-aad7-4bac-95de-c6e3f122d015>

This is important as currently there is no well-defined vision on how to safeguard and empower consumers despite the alleged rapid growth of these technologies. This is something the Communication and the Consumer law REFIT evaluation should address, and the Commission should foresee concrete steps to ensure consumers truly benefit from these technologies while being protected by default and by design.

Among other matters of importance, the Commission should consider the following:

- Assessing the risks and benefits of virtual worlds for consumers as well as a stress test for EU consumer, data protection, privacy and other relevant digital legislation that would apply.
- Identifying any gaps in legislation and also explore enforcement structures and their capacity to deal with newly emerging challenges.
- Including the results in the preparations for the report on the EU consumer law fitness check expected in June 2024.
- Addressing commercial surveillance, including surveillance advertising in these ecosystems and focus on alternative business models that are less intrusive and protect consumers' privacy, personal data and consumer rights by default and by design.
- Patents by Meta<sup>9</sup> show that virtual worlds could use consumers' movements or facial expressions to evaluate consumers' interests and emotional state and use this for commercial purposes. This raises serious privacy and consumer protection concerns that the EU should ensure do not materialise.
- Extended reality technologies must not be designed to distort or likely distort consumers' transactional behaviour leading to making a transactional decision that the consumer would not have made otherwise<sup>10</sup>. Virtual worlds exacerbate the digital asymmetry and lack of consumer awareness of potential deceptive design of these technologies, products or services offered therein. This should be considered within the context of the digital fairness fitness check conducted by the European Commission.
- The need to ensure competition and consumer choice, building on EU's competition law and the recently adopted Digital Markets Act and filling any gaps identified.<sup>11</sup>
- The portability of digital content in extended reality technologies in light of data protection, privacy and cybersecurity. Intellectual property or trade secrets cannot be used to claim data ownership over data people has helped generate.
- How extended reality technologies will effectively protect the rights of the child, ensuring a high level of privacy, security and safety. Similarly, the Commission should consider how children's effects on mental health and other harms should be effectively addressed.
- Liability allocations within the framework of the Product Liability Directive review and the AI Liability proposal currently under negotiations.
- The sustainability of these technologies, including on how they will ensure consumers' right to repair.
- Extended reality technologies' fintech-related legal challenges, especially when businesses sell digital goods and services in virtual worlds<sup>12</sup>.

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<sup>9</sup> <https://www.ft.com/content/76d40aac-034e-4e0b-95eb-c5d34146f647>

<sup>10</sup> For more details, please see [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-020\\_Consultation\\_paper\\_REFIT\\_consumer\\_law\\_digital\\_fairness.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-020_Consultation_paper_REFIT_consumer_law_digital_fairness.pdf)

<sup>11</sup> In this sense, see e.g., <https://www.accessnow.org/human-rights-metaverse-virtual-augmented-reality/>

<sup>12</sup> <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2022/02/the-metaverse-what-are-the-legal-implications.pdf>

## 2. Future monitoring

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BEUC particularly welcomes the Commission plans to closely coordinate with several directorate generals to ensure a comprehensive approach to monitor the progress of each action the Commission will identify. As part of the upcoming Communication and monitoring strategy, the Commission should thoroughly identify the potential limits and gaps of current EU legislation to effectively protect consumers in virtual worlds and assess whether further legislation may be needed.

## 3. Consultation strategy

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BEUC regrets that the Commission does not seem to have foreseen targeted consultations and workshops with civil society organisations, including consumer organisations, as it has done with industry. Civil society organisations and consumer organisations are not explicitly mentioned as target audience of this consultation, which is very concerning. BEUC calls on the Commission to ensure consumer organisations are included in future workshops and events to ensure the consumer perspective is not overlooked or underrepresented.

ENDS

