*European Journal of Risk Regulation* (2026), 1–18
doi:10.1017/err.2026.10106

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

# Digital Distraction and Environmental Deregulation: The Psychopolitics of Attention Fragmentation in Platform Capitalism‡

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## Abstract

This article argues that platform capitalism generates a distinct legal problem that existing regulatory frameworks, designed to address disinformation and censorship, structurally fail to recognise: attention fragmentation. The commodification of attention produces a form of distraction that undermines the preconditions legal accountability itself depends on. Platform capitalism's business model rewards engagement, and the dominant architectures reward a fragmented modality of engagement in particular, producing subjects who have internalised the logic of self-optimisation that Han identifies as psychopolitics. Through a theoretical genealogy from Debord's externally imposed spectacle to Han's psychopolitical internalisation, this article explains why distraction resists conventional legal intervention. Turning to environmental governance as a particularly stark illustration, the article reveals four structural vulnerabilities that make environmental regulation systematically susceptible to attention collapse: temporal mismatch, monitoring dependency, breakdown of accountability chains and asymmetric harm distribution. The article identifies possible policy interventions but emphasises their structural limits; legal reform cannot guarantee attention when the economic system profits from its commodification and fragmentation. The effectiveness of law in the age of platform capitalism depends on confronting the alignment between extractive capital's interest in deregulation and platform capital's dependence on engagement-driven fragmentation.

**Keywords:** attention fragmentation; platform capitalism; psychopolitics

## I. Introduction

In January 2025, massive wildfires consumed the Los Angeles area for twenty-four consecutive days.[1] The conflagration dominated media coverage: federal agencies issued disaster declarations,[2] military units deployed[3] and civil-society organisations redirected

‡ This article has been updated since its original publication. A notice detailing this can be found here: https://doi.org/10.1017/err.2026.10113

[1] On how these wildfires illustrate the intersection of climate-amplified hazards with social vulnerabilities to produce catastrophic outcomes, see MA Chisty, "Before Moments Become Memories: Virtual Reconnaissance of the 2025 Southern California Wildfires" (2025) 129 International Journal of Disaster Risk Reduction 105769.

[2] White House, "President Joseph R. Biden, Jr. Approves California Major Disaster Declaration" (8 January 2025) <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/08/president-joseph-r-biden-jr-approves-california-major-disaster-declaration/> (last accessed 27 January 2026).

[3] US Army, "National Guard Fights California Wildfires" (15 January 2025) <https://www.army.mil/article/282539/national_guard_fights_california_wildfires_additional_assets_remain_on_standby> (last accessed 27 January 2026).

capacity toward immediate crisis response.[4] The public sphere unified around a single question – which communities would burn next – while the coverage saturated every channel. By March, the Environmental Protection Agency (EPA) announced "the biggest deregulatory action in US history,"[5] simultaneously rolling back mercury and air toxics standards, weakening carbon-emission restrictions and dismantling climate regulations that had taken years to develop. On this "historic day of deregulation,"[6] the EPA unveiled thirty-one actions reshaping federal enforcement architecture.

The EPA announcements unfolded within a news environment saturated by a succession of political scandals. The EPA's measures were announced the same week President Trump declared he would use the Department of Justice to "target his own enemies,"[7] and expanded his administration's crackdown on major law firms with Democratic ties.[8] Within weeks, another scandal consumed the public sphere: Cabinet officials had discussed military strike plans in a group chat that accidentally included a journalist[9] – four days of blanket coverage followed. By the time attention could return to environmental policy, the changes were already moving through administrative machinery; the window for mobilisation had closed. As a political technique, this dynamic reflects Steve Bannon's injunction to "flood the zone"[10] – not to persuade or suppress, but to overwhelm attention such that costly revelations are displaced before institutional accountability can attach.

But this dynamic extends beyond the US. This article argues that platform capitalism generates a distinct legal problem: the commodification of attention produces a form of distraction that undermines the attentional preconditions on which legal accountability depends. Existing EU regulatory frameworks structurally fail to recognise this problem because they conceptualise harm in terms of content (false, illegal or suppressed) rather than attention allocation. Environmental deregulation provides a particularly stark illustration of the mechanism, which is not incidental to late capitalism but rationalised within it. The same attention economy that maximises profit through engagement-driven fragmentation is the economy that benefits from environmental deregulation. The law cannot adequately address distraction without confronting the material conditions producing it: the commodification of attention itself, the psychological internalisation of engagement metrics as measures of worth and the structural alignment between two profit logics, namely extractive capital's interest in environmental deregulation and platform capital's dependence on attention fragmentation.[11]

[4] American Red Cross, "California Wildfires Response" (19 February 2025) <https://www.redcross.org/local/california/los-angeles/about-us/our-work/california-wildfires-response-january-2025.html> (last accessed 27 January 2026).

[5] EPA, "EPA Launches Biggest Deregulatory Action in U.S. History" (12 March 2025) <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history> (last accessed 27 January 2026).

[6] EPA, "What They Are Saying: Leaders Applaud EPA's Historic Deregulatory Actions to Power the Great American Comeback" (14 March 2025) <https://www.epa.gov/newsreleases/what-they-are-saying-leaders-applaud-epas-historic-deregulatory-actions-power-great> (last accessed 27 January 2026).

[7] CNN, "Takeaways from Trump's Airing of Grievances at the Justice Department" (14 March 2025) <https://edition.cnn.com/2025/03/14/politics/justice-department-trump-speech-takeaways/index.html> (last accessed 27 January 2026).

[8] CNN, "March 14, 2025: Donald Trump Presidency News" (14 March 2025) <https://edition.cnn.com/politics/live-news/trump-administration-presidency-03-14-2025/index.html> (last accessed 27 January 2026).

[9] J Goldberg, "Here Are the Attack Plans That Trump's Advisers Shared on Signal" The Atlantic (24 March 2025) <https://www.theatlantic.com/politics/archive/2025/03/trump-advisers-yemen-war-plans-signal-group-chat/680537/> (last accessed 27 January 2026).

[10] S Illing, "'Flood the Zone with Shit': How Misinformation Overwhelmed Our Democracy" Vox (16 January 2020) <https://www.vox.com/policy-and-politics/2020/1/16/20991816/impeachment-trial-trump-bannon-misinformation> (last accessed 27 January 2026).

[11] Research in cognitive science and human–computer interaction shows how online environments systematically erode users' capacity to sustain attention and resist distraction. See U Lyngs and others,

Current legal frameworks, including the Digital Services Act (DSA),[12] the General Data Protection Regulation (GDPR),[13] the Aarhus Convention's[14] access and participation guarantees, and Environmental Impact Assessment (EIA) obligations,[15] address adjacent concerns (algorithmic transparency, data rights, participation, *ex ante* appraisal), but they assume publics capable of sustained focus.[16] Distraction presumes neither falsity nor suppression. The EPA deregulation was real and publicly announced. Information was not erased or falsified; it was crowded out by the sheer volume of competing signals demanding attention. Where legal designs presuppose attentiveness through public consultation windows, continuous monitoring duties, and affordable access to justice, the fragmentation of attention degrades their practical effect despite formal compliance.

Environmental governance is peculiarly exposed because its accountability chain is long and fragile.[17] From detection through investigation to remedy, each link requires sustained attention. Distraction breaks the chain at any link. When media attention scatters, violations never reach scandal intensity. When civil-society capacity redirects, litigation loses momentum. When regulatory attention fractures, monitoring lapses and compliance deadlines slip. Distributional asymmetries compound these effects: those who benefit from non-compliance can act decisively while those who bear the costs cannot easily mobilise.[18] Formal law remains on the books; practical enforcement evaporates. Because of the *psychopolitics*[19] that underlie this dynamic, legal frameworks that are procedurally well-designed can still fail when their precondition of sustained public and bureaucratic attention is systematically undermined.

This article proceeds as follows: Section II distinguishes distraction from existing regulatory categories (disinformation and censorship), develops the theoretical genealogy necessary to understand why distraction resists regulation, and identifies the platform architectures through which psychopolitical subjects are produced – revealing the structural alignment between extractive and platform capitalism. Section III turns to environmental governance as an illustration, showing how four structural weaknesses might manifest under conditions of fractured attention: temporal mismatch, monitoring dependency, breakdown of accountability chains and asymmetric harm distribution. That section then articulates what EU frameworks miss and assesses policy interventions alongside their structural limits. Section IV concludes.

"Self-Control in Cyberspace: Applying Dual Systems Theory to a Review of Digital Self-Control Tools" *Proceedings of the 2019 CHI Conference on Human Factors in Computing Systems* (ACM 2019).

[12] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC [2022] OJ L277/1.

[13] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ L119/1.

[14] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

[15] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 2014/52/EU) [2012] OJ L26/1.

[16] On how transparency in environmental governance is not sufficient, see A Gupta, I Boas and P Oosterveer, "Transparency in Global Sustainability Governance: To What Effect?" (2020) 22 Journal of Environmental Policy & Planning 84.

[17] T Kramarz and S Park, "Accountability in Global Environmental Governance: A Meaningful Tool for Action?" (2016) 16 Global Environmental Politics 1.

[18] N Atkinson, "Profiting from Pollution" (2023) 41 Yale Journal on Regulation Bulletin 1.

[19] BC Han, *Psychopolitics: Neoliberalism and New Technologies of Power* (Erik Butler tr, Verso 2017).

## II. Distraction as a mechanism

### 1. Beyond disinformation and censorship

In August 2025, Dutch politician Geert Wilders posted an inflammatory image on social media contrasting a young blonde woman labelled "PVV" (his party) with an angry older woman wearing a headscarf labelled "PvdA" (the opposition Labour Party).[20] Critics compared the imagery to Nazi-era propaganda; the scandal consumed Dutch political discourse throughout late summer. But this was merely the latest in a continuous stream of controversies since Wilders's coalition formed in 2024: near-collapse over budget disputes, ministerial resignations over racism allegations, repeated threats by Wilders to topple his own government.[21] Each crisis dominated news cycles. Throughout this period, the same government scrapped the National Rural Area Programme on nitrogen reduction,[22] discontinued electric-vehicle subsidies,[23] raised motorway speed limits,[24] extended fuel excise cuts,[25] and planned to neutralise the industrial $CO_2$ levy.[26] As in the US, these Dutch scandals were not exactly disinformation, and the environmental rollbacks were not censored. Both were publicly visible, yet attention to one systematically displaced attention from the other.

Current frameworks presume disinformation (false content) or censorship (suppressed content), that is, something absent or falsified. Distraction presumes neither falsity nor suppression; it manipulates signal-to-noise, not truth-value or access, saturating environments with competing claims such that no issue maintains traction.[27] The DSA addresses systemic risks including threats to civic discourse, but its framework struggles to treat attention fragmentation itself (as distinct from the amplification of harmful content) as a cognisable harm requiring mitigation.[28] GDPR secures transparency about data collection and processing, but does not reach the use of that data to design attention-capturing architectures through which fragmentation is engineered.[29] The European Media Freedom Act establishes transparency duties for media ownership and protections

[20] TRT World, "Explained: How Dutch Far-Right Politician Geert Wilders Continues to Demonise Muslims" (TRT World, 12 August 2025) <https://www.trtworld.com/article/54650cd1e759> (last accessed 27 January 2026).

[21] "Criticism is Mounting in the Netherlands Against Geert Wilders, Who Triggered the Fall of the Government" (Le Monde, 4 June 2025) <https://www.lemonde.fr/en/international/article/2025/06/04/in-the-netherlands-criticism-is-mounting-against-geert-wilders-who-triggered-the-fall-of-the-government_6741987_4.html> (last accessed 29 October 2025).

[22] "New Cabinet Scraps National Nature Restoration Plan, Nitrogen Emissions Policy" (NL Times, 4 September 2024) <https://nltimes.nl/2024/09/04/new-cabinet-scraps-national-nature-restoration-plan-nitrogen-emissions-policy> (last accessed 29 October 2025).

[23] "Government of the Netherlands Confirms no Further Incentives for Electric Vehicles in 2025" (Mobility Portal, 28 January 2025) <https://mobilityportal.eu/netherlands-no-incentives-electric-vehicles/> (last accessed 27 January 2026).

[24] "Motorists Can Speed up to 130 kph on Three Bits of Motorway" (14 April 2025) Dutch News <https://www.dutchnews.nl/2025/04/motorists-can-speed-up-to-130kph-on-three-bits-of-motorway/> (last accessed 27 January 2026).

[25] "Reduced Excise Duty on Fuels Extended Until 1 January 2027" (amendment) Business.gov.nl <https://business.gov.nl/amendment/reduced-excise-duty-fuels-extended/> (last accessed 29 October 2025).

[26] "Climate, Energy and Automotive Measures" (16 September 2025) PWC <https://www.pwc.nl/en/insights-and-publications/tax-news/other/climate-energy-and-automotive-measures.html> (last accessed 29 October 2025).

[27] A Kwek and others, "Distractions, Analytical Thinking and Falling for Fake News: A Survey of Psychological Factors" (2023) 10 Humanities and Social Sciences Communications 319.

[28] R Ó Fathaigh, D Buijs and J Van Hoboken, "The Regulation of Disinformation Under the Digital Services Act" (2025) 13 Media and Communication 9615.

[29] On enhancing compliance with the GDPR, see C Quelle, "Enhancing Compliance under the General Data Protection Regulation: The Risky Upshot of the Accountability- and Risk-Based Approach" (2018) 9 European Journal of Risk Regulation 502.

for editorial independence, but these do not neutralise the market incentives that make attention fragmentation profitable regardless of who controls the platforms.[30] The law tries to ensure information is true, accessible and pluralistic, but not that publics can sustain attention long enough for accountability. The assumption that accurate, available, diverse information produces democratic oversight becomes untenable when information environments fragment attention systematically.[31]

## 2. The evolution of unregulatable power

Understanding distraction as mere information management misses something more fundamental: the psychological internalisation of distraction logic itself. Grasping this idea requires tracing how power has evolved from external imposition (which remains regulatable through conventional legal mechanisms) to internalised self-governance (which resists regulation because it operates through subjects' own psychological compulsions).

Writing in the era of centralised mass broadcasting, Debord identified how late capitalism operates through dominance of appearance over substance. In his formulation, societies dominated by modern conditions of production see life become an immense accumulation of spectacles, where everything directly lived recedes into representation.[32] In Debord's work, the spectacle was imposed from above: television, cinema and print media created one-directional flows where power operated through production of managed appearances.[33] However, his view assumed a stable media landscape with clear distinctions between producers and consumers – conditions that no longer hold.[34] Baudrillard recognised that the distinction between reality and representation had collapsed into what he called hyperreality, where simulation precedes and produces experience.[35] In the age of social media, we are all creators of the spectacle. Debord's spectacle still masked a persistent reality; Baudrillard dissolved even that distinction: simulation has become constitutive of what is real.[36]

While Debord and Baudrillard remained focused on representation (on how reality is displayed or simulated, on the spectacle as something external), Foucault excavated a deeper mechanism: how subjects internalise the very architecture of control. We are not only creators of the spectacle; the spectacle is within us. Foucault's analysis of Bentham's panopticon revealed how power could operate through anticipated surveillance: the prisoner who knows they might be watched at any moment internalises the constraints of

[30] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) [2024] OJ L 2024/1083. On the gaps that remain in EU regulation of media concentration and platform dependence, see TJ Seipp and others, "Between the Cracks: Blind Spots in Regulating Media Concentration and Platform Dependence in the EU" (2024) 13 Internet Policy Review.

[31] P Mancini, "Media Fragmentation, Party System, and Democracy" (2013) 18 The International Journal of Press/Politics 43; P Lorenz-Spreen and others, "A Systematic Review of Worldwide Causal and Correlational Evidence on Digital Media and Democracy" (2022) 7 Nature Human Behaviour 74.

[32] G Debord, *The Society of the Spectacle* (Rebel Press 2005). See also D Brancaleone and S O'Brien, "Educational Commodification and the (Economic) Sign Value of Learning Outcomes" (2011) 32 British Journal of Sociology of Education 501.

[33] M Puchner, "Society of the Counter-Spectacle: Debord and the Theatre of the Situationists" (2004) 29 Theatre Research International 4.

[34] M Briziarelli and E Armano (eds), *The Spectacle 2.0: Reading Debord in the Context of Digital Capitalism* (University of Westminster Press 2017).

[35] J Baudrillard, *Simulacra and Simulation* (Sheila Faria Glaser tr, University of Michigan Press 2019).

[36] For regulation, this presents a profound challenge: transparency reveals only more layers of mediation, not an independent truth to restore. See C Van Kessel, JD Manriquez and K Kline, "Baudrillard, Hyperreality, and the "Problematic" of (Mis/Dis)Information in Social Media" (2025) 53 Theory & Research in Social Education 249.

power, disciplining themselves even when no guard observes.[37] The architecture creates subjects who regulate their own behaviour. But Foucault's disciplinary societies still operated through fixed institutional spaces (prisons, hospitals, schools, factories); power remained locatable. Deleuze identified the next shift. He argued that enclosed disciplinary spaces were giving way to control societies operating through continuous modulation via data systems that adjust to predicted behaviour.[38] Control societies no longer operate through spatial confinement but through continuous monitoring and instant communication. Power is no longer spatially bound. This creates a problem for regulation: the law targets identifiable institutions and locatable exercises of power, but control societies operate through distributed systems with no central point to regulate. Legal intervention becomes merely another input for the system to modulate around – not a constraint but a variable to optimise.[39] But even in Deleuze's account, power retains an external dimension: data systems act on subjects, modulating their behaviour. Han identifies the final step: power that operates not on subjects but through them.

Han's concept of psychopolitics extends Deleuze's account to its ultimate form: complete psychological internalisation.[40] Where Deleuze described ambient modulation through data systems, Han shows how control societies achieve their most insidious operation by restructuring subjects' own sense of self and value. Through constant engagement with performance metrics (likes, shares, followers), users internalise the logic of endless self-optimisation. Users become self-governing – compelled not by external coercion but by internalised standards they experience as their own desires. The system no longer feels like a constraint: we are not forced to check notifications; we do so because engagement metrics have become measures of our own worth and identity; often, the compulsion feels rewarding.[41] Contemporary distraction operates at this psychopolitical level. The Wilders scandal succeeded because it was emotionally charged, algorithmically promoted, and calibrated to metrics that reward controversy.[42] Users became psychologically invested; online debates became sites where they "voluntarily" fragmented their own attention, performing outrage as participation.[43] Users were not passively consuming; they were actively responding, experiencing their involvement as meaningful civic action. Environmental rollbacks, by contrast, are procedurally complex,

[37] M Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, Penguin Classics 2020).

[38] G Deleuze, "Postscript on the Societies of Control" (1992) 59 October 3.

[39] For regulatory scholarship addressing how law's focus on identifiable actors or institutions is challenged by distributed socio-technical systems, see M Jacobs and J Simon, "Assigning Obligations in AI Regulation: A Discussion of Two Frameworks Proposed By the European Commission" (2022) 1 Digital Society 6; M Almada, "Regulation by Design and the Governance of Technological Futures" (2023) 14 European Journal of Risk Regulation 697.

[40] Han (n 19). Han's work has attracted criticism for its aphoristic style and lack of sustained empirical engagement. Karataş, for example, argues that Han's formal brevity reproduces the dynamics Han himself critiques. İB Karataş, "Toward a Critique of Critique: Paradoxes of Byung-Chul Han and the Dialectic of Despair and Possibility" [2025] Constellations 1. For present purposes, however, the conceptual framework retains value because the analysis does not depend on Han's broader normative claims but only on the structural observation that engagement metrics have become psychologically internalised – a phenomenon extensively documented in human-computer interaction research. Lyngs and others (n 11).

[41] SY Tereshchenko, "Neurobiological Risk Factors for Problematic Social Media Use as a Specific Form of Internet Addiction: A Narrative Review" (2023) 13 World Journal of Psychiatry 160.

[42] H Metzler and D Garcia, "Social Drivers and Algorithmic Mechanisms on Digital Media" (2024) 19 Perspectives on Psychological Science 735; WJ Brady and others, "How Social Learning Amplifies Moral Outrage Expression in Online Social Networks" (2021) 7 Science Advances eabe5641.

[43] Although users experience their participation as voluntary, this agency is modulated by algorithmic architectures that condition attention and emotional response. See T Bucher, *If . . . Then: Algorithmic Power and Politics* (Oxford University Press 2018); S Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019); J Van Dijck, *The Culture of Connectivity: A Critical History of Social Media* (Oxford University Press 2013).

affect dispersed populations over extended timescales, show effects delayed by years – they do not trigger the same psychological compulsion.[44] Instead, they require sustained attention, technical understanding, institutional coordination – precisely what fragmented attention makes impossible. This is not to claim that environmental concerns as such are inaccessible to the attention economy: emotionally resonant or visually dramatic episodes can command platform visibility and sometimes do. The vulnerabilities this article identifies lie elsewhere, in the procedural infrastructure on which environmental accountability runs: consultation windows, monitoring cycles, permitting review and compliance litigation. None of these carry the properties platforms reward.

## 3. *Platform architecture as psychopolitical infrastructure*

Han describes psychopolitics as a condition – the internalisation of self-optimisation as identity. But what produces this condition in its contemporary form? A growing body of scholarship identifies platform architectures as a significant source. Digital platforms do not merely capture attention but restructure subjectivity itself. Where broadcast media captured attention in discrete blocks, digital platforms pursue what Wu calls "continuous capture" across the entire waking day.[45]

Habermas identifies this shift as a further structural transformation of the public sphere.[46] The deliberative preconditions that his framework identifies (sustained engagement, exposure to contrary views, willingness to revise positions through argument) are especially stringent for what environmental governance requires: publics capable of following technical debates over time, weighing competing interests, and holding institutions accountable across extended timescales. When platforms optimise for engagement metrics that reward controversy over complexity, emotional reaction over reasoned response, these preconditions erode.[47] The public sphere does not disappear; it fragments into disconnected enclaves where attention is too fractured to sustain the institutional focus environmental accountability demands. Sunstein pressed a related argument: democratic deliberation requires certain background conditions, including exposure to shared information and unanticipated viewpoints, that markets alone will not provide – a structural deficit that platform-mediated fragmentation has intensified rather than resolved.[48]

The psychopolitical transformation of the public sphere is particularly relevant for regulatory design. Thaler and Sunstein's influential work on the architecture of choice describes how environments can be structured to shape decisions while preserving the subject's capacity for deliberation – the theoretical basis for "nudge" interventions that guide behaviour without undermining autonomous choice.[49] Platform architectures operate differently. Where nudges assume a deliberating subject whose choices can be guided, psychopolitical transformation restructures the subject's capacity to sustain attention in the first instance. These same conditions, which nudge theory presupposes and which environmental law's participation and oversight mechanisms require, become

[44] J Tang and others, "Sustaining Attention to Positive While Early Vigilance for Negative Environmental Information: Evidence from Eye Movements" (2025) 106 Journal of Environmental Psychology 102717.

[45] T Wu, *The Attention Merchants: The Epic Scramble to Get inside Our Heads* (Alfred A Knopf 2016).

[46] J Habermas, "Reflections and Hypotheses on a Further Structural Transformation of the Political Public Sphere" (2022) 39 Theory, Culture & Society 145.

[47] Ibid.

[48] CR Sunstein, *Democracy and the Problem of Free Speech* (The Free Press 1993).

[49] RH Thaler and CR Sunstein, "Libertarian Paternalism" (2003) 93 American Economic Review 175; RH Thaler, CR Sunstein and JP Balz, "Choice Architecture" in E Shafir (ed), *The Behavioral Foundations of Public Policy* (Princeton University Press 2013). See also RH Thaler and CR Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness* (Penguin Books 2009).

unavailable. Regulatory interventions designed for an architecture of choice confront a more fundamental problem when the architecture has reshaped the chooser.[50]

The mechanism operates through four interlocking features: algorithmic recommendation systems that maximise engagement by surfacing emotionally charged content; variable reward schedules that induce compulsive checking; infinite scroll interfaces that eliminate natural stopping points; and notification systems calibrated to interrupt sustained focus.[51] These are not incidental features. Wu's concept of the "attention broker" clarifies the underlying market structure: platforms offer free services to users while selling their attention to advertisers – the basic transaction of nineteenth-century newspapers, radically intensified.[52] The currency is engagement itself: measurable, optimisable, infinitely divisible units of human focus. These mechanisms do not merely capture attention; they provide the material infrastructure through which Han's psychopolitical subjects are produced.

The cycle is self-reinforcing. As Bietti shows, platforms capture attention to collect data, then use that data to design more engaging experiences that capture more attention.[53] The spiral produces what she terms "a harmful commodification and erosion of time and attention which shrinks the human experience."[54] The dominant platform architectures optimise for a specific modality of capture: many short, interruptible interactions that maximise data signal per unit of time and keep users reachable for the next engagement cycle. Fragmentation is therefore not definitional to attention capture but contingent on the design choices the four mechanisms above embody. Conventional approaches seem to miss the problem entirely. Attention markets represent, in Newman's phrase, "the largest sector of the modern economy to have gone unnoticed by antitrust regulators."[55] When platforms offer free services, traditional price-based analysis fails to register harm. Yet the extraction of more attention than users would willingly provide in a competitive market produces real costs – what Pałka characterises as cognitive pollution: users unknowingly barter attention, emotions and cognitive resources through technologically managed systems that legal frameworks struggle even to conceptualise.[56]

Cognitive pollution has direct implications for legal accountability. The same platform architectures that produce psychopolitical subjects simultaneously degrade the attentional preconditions on which any attention-dependent legal regime depends, including the environmental governance frameworks examined in the next section. Section III.3 will consider some regulatory interventions that remain possible within these constraints, but any realistic assessment must recognise that attention fragmentation is not an algorithmic bug to be patched but a feature from which platform capitalism profits. Conventional legal frameworks, which target content and access, are poorly fitted to regulate psychological compulsion at the level where platform architectures produce it.

[50] On manipulation and autonomy concerns within nudge theory, see PG Hansen and AM Jespersen, "Nudge and the Manipulation of Choice: A Framework for the Responsible Use of the Nudge Approach to Behaviour Change in Public Policy" (2013) 4 European Journal of Risk Regulation 3. That article distinguishes "Type 1" nudges that bypass deliberation from "Type 2" nudges that engage it, and argues that non-transparent nudges "render autonomous choice a mere fiction." The distinction drawn here goes further: nudges presuppose and preserve a deliberative capacity that can be either bypassed or engaged; psychopolitical transformation erodes the capacity itself.

[51] P Pałka, "Problems of Technological Management: On Automated Extraction of Mental Goods" in R Brownsword and LA DiMatteo (eds), *The Cambridge Handbook of the Governance of Technology* (Cambridge University Press 2025).

[52] T Wu, "Blind Spot: The Attention Economy and the Law" (2019) 82 Antitrust Law Journal 771.

[53] E Bietti, "The Data-Attention Imperative" (Northeastern University School of Law Research Paper No 473, 2024) <https://ssrn.com/abstract=4729500> (last accessed 27 January 2026).

[54] Ibid.

[55] JM Newman, "Antitrust in Attention Markets: Objections and Responses" (2020) 59 Santa Clara Law Review 743.

[56] Pałka (n 51).

Even if regulation curtailed engagement-maximising algorithms, it would still face populations whose sense of worth has become bound to platform metrics, as what began as external incentive structures has been internalised as identity itself.

Environmental governance is particularly vulnerable because accountability unfolds over years, not news cycles or social media trends. When attention fractures, monitoring lapses, compliance deadlines slip and litigation loses momentum.[57] By the time attention returns, accountability windows have closed: illegal clearing has occurred, emissions have been released, and regulatory changes are embedded in administrative code. This is a specific instance of a more general psycho-structural problem for law in times of platform capitalism: enforcement depends on populations capable of sustained and coordinated attention over long timeframes, but those populations have been psychologically restructured toward fragmentation and reactive engagement. The conditions for accountability that law presumes are not merely absent but structurally underprovided at the scale on which accountability operates. They are available in concentrated bursts around platform-legible events and unavailable for the slow, technical, distributed work that legal accountability requires.

## III. Environmental governance under fractured attention

### *1. Susceptibility to attention fragmentation*

The analysis of the distraction mechanism developed above allows some predictions about how environmental governance would fare under conditions of sustained attention fragmentation. When a crisis monopolises the public sphere for extended periods, the analysis predicts that parliamentary agendas would reorder toward immediate exigencies; news cycles would narrow to crisis-related matters; civil-society organisations would shift staff and litigation capacity toward urgent response work. Formal environmental procedures would continue to run, but the precondition those procedures presuppose, sustained attention, would be systematically undermined. Consultation windows would open and close with diminished engagement; monitoring cycles would slip as inspectors faced redeployments and access constraints; temporary relaxations, introduced as pragmatic responses, would accumulate under headings that made them difficult to contest in real time.

The COVID-19 pandemic, beginning in March 2020, created precisely such conditions across the EU.[58] While definitive causal attribution remains epistemically difficult, developments during this period are consistent with attention-mediated effects on environmental governance.[59] In Poland, controversies around forest management continued while infringement proceedings concerning the Białowieża Forest remained live – a pattern suggesting concurrent scrutiny had diminished.[60] In Germany, the

[57] J Sun and others, "The Government's Environmental Attention and the Sustainability of Environmental Protection Expenditure: Evidence from China" (2023) 15 Sustainability 11163.

[58] European Parliament Directorate-General for Parliamentary Research Services, *States of Emergency in Response to the Coronavirus Crisis: Normative Response and Parliamentary Oversight in the EU Member States during the First Wave of the Pandemic* (European Parliament 2020).

[59] Note that alternative explanations (economic pressure, reduced capacity, political opportunism, legitimate trade-offs) are not excluded. This article identifies attention fragmentation as a permissive condition: fractured attention lowers the probability of contestation and raises the payoff of deregulatory action, whatever the actual proximate motive. J Tuñón-Navarro and U Carral-Vilar, "Has COVID-19 Promoted or Discouraged a European Public Sphere? Comparative Analysis of the Twitter Interactions of German, French, Italian and Spanish MEPSs during the Pandemic" (2021) 34 Communication & Society 135. See also J Markard and D Rosenbloom, "A Tale of Two Crises: COVID-19 and Climate" (2020) 16 Sustainability: Science, Practice and Policy 53.

[60] Case C-441/17 *European Commission v Republic of Poland* (Judgment of the Court, Grand Chamber, 17 April 2018, EU:C:2018:255); European Commission, "Nature Protection: Commission is Calling on Poland to Implement the Court of Justice Ruling on Nature Protection in the Białowieża Forest" (INF/21/441, 17 February 2021).

government revisited elements of its coal-phase-out schedule and overhauled industrial permitting laws to shorten approval timelines – developments that align with the predicted effects of attention scarcity on complex regulatory processes.[61] In Italy, emergency decrees amended the Environmental Code to fast-track EIAs for "priority projects," compressing consultation and screening periods – fitting the prediction that participation requirements would be met formally while practical engagement declined.[62] In Spain, coastal and urban-development permissions advanced with truncated consultation periods – illustrating how the temporal vulnerability might manifest in practice.[63] In France, reports indicate that industrial-emissions inspections faced postponements and regulatory follow-up slipped – a dynamic that accords with the predicted effects of administrative redeployment on monitoring capacity.[64]

Legal guarantees of access to information, participation, and justice remain formally available, but the practical capacity to convert them into effective mobilisation diminishes. As the notion of psychopolitics suggests, such effects would operate not merely at an institutional level but at a psychological one: populations would lack the capacity for sustained attention that environmental law presupposes. The distraction mechanism does not require states to deliberately hide environmental decisions. Rather, the features that ordinarily make EU environmental governance work depend on people objecting and pursuing claims within defined windows: front-loaded appraisal and participation under the EIA Directive, continuous surveillance and reporting under the Habitats and Birds Directives[65] across the Natura 2000 network, and an expectation of accessible judicial review under the Aarhus Convention.[66] But when attention is monopolised elsewhere for extended periods, the formalities can be met, yet the function fails.

The Brazilian example from 2020 rendered this logic explicit: Ricardo Salles, President Bolsonaro's Environment Minister, told colleagues to *passar a boiada* ("let the cattle through") – to push through deregulatory changes while press attention was fixed on COVID-19.[67] Salles's bluntness proves that the mechanism can be deliberately deployed.

[61] Germany, Act to Ensure Orderly Planning and Approval Procedures during the COVID-19 Pandemic of 20 May 2020 (BGBl I S 1041); Act to Reduce and End Coal-Fired Power Generation of 8 August 2020 (BGBl I S 1818). See also M Knauff, "Coronavirus and Soft Law in Germany: Business as Usual?" (2021) 12 European Journal of Risk Regulation 45.

[62] Italy, Decree-Law No 77 of 31 May 2021 on governance of the National Recovery and Resilience Plan and initial measures to strengthen administrative structures and accelerate and streamline procedures, converted into Law No 108 of 29 July 2021 (Gazzetta Ufficiale Serie Generale No 129, 31 May 2021).

[63] European Union Agency for Fundamental Rights, *What Impact is the COVID-19 Pandemic Having on Access to Justice in the EU?* (Report, 4 May 2020); Spain, Royal Decree 463/2020 of 14 March 2020 declaring the state of alarm for the management of the health-crisis situation caused by COVID-19 (Boletín Oficial del Estado No 67, 14 March 2020).

[64] French Nuclear Safety Authority, *Report on the State of Nuclear Safety and Radiation Protection in France in 2020* (31 May 2021); Z Or and others, "France's Response to the Covid-19 Pandemic: Between a Rock and a Hard Place" (2022) 17 Health Economics, Policy and Law 14.

[65] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7; Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2010] OJ L20/7.

[66] European Commission, *Report on European Union Implementation of the Aarhus Convention in the Area of Access to Justice in Environmental Matters* (Staff Working Document SWD (2019) 378 final, October 2019). See also M Van Wolferen and M Eliantonio, "Access to Justice in Environmental Matters in the EU: The EU's Difficult Road towards Non-Compliance with the Aarhus Convention" in M Peeters and M Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020).

[67] J Spring, "Brazil Minister Calls for Environmental Deregulation While Public Distracted by COVID" *Reuters* (São Paulo, 22 May 2020) <https://www.reuters.com/article/business/environment/brazil-minister-calls-for-environmental-deregulation-while-public-distracted-by-idUSKBN22Y30X> (last accessed 27 January 2026). See also C Sordi, J Segata and B Lewgoy, "Covid-19 and Disaster Capitalism: "Passando a Boiada" in the Brazilian Meat Processing Chain" (2022) 19 Vibrant: Virtual Brazilian Anthropology e19904.

But the explanation is not reducible to individual intent. What Salles articulated explicitly was a strategy that the structural conditions made rational: when attention fragments, the cost-benefit calculation for deregulation shifts decisively. Whether actors consciously exploited this window or whether rollbacks emerged from routine administrative responses, the same structural incentives operated. The system produces both the opportunity and the logic; actors simply respond to those incentives.[68]

## 2. Four vulnerabilities

This section articulates four structural vulnerabilities that make environmental governance particularly susceptible to attention fragmentation. The framework identifies structural conditions that make governance failure more likely, not inevitable; the COVID-19 pandemic helps illustrate these vulnerabilities, though definitive causal attribution is not possible.[69]

The first vulnerability is temporal. Environmental harms typically unfold over long horizons, while crisis politics is measured in hours and days. The EIA Directive organises decision-making through *ex ante* appraisal and participation within fixed consultation windows.[70] After those windows close and projects receive development consent, later legal challenges become more difficult. The Court of Justice of the EU (CJEU) has established standards that prevent automatic annulment for procedural defects.[71] In *Altrip*, the Court held that annulment depends on whether the procedural breach could have influenced the outcome.[72] Under conditions of sustained crisis, attention would be trained on immediate risks, allowing consultation deadlines linked to infrastructure or industrial permitting to pass with diminished practical engagement even where authorities comply with publication and access requirements. Reports from the COVID-19 period align with this prediction.[73] The effects of relaxed timelines or extended plant operations, by contrast, will manifest in air quality, carbon budgets and habitat integrity only over years. This temporal asymmetry favours decisions whose consequences are slow and dispersed, while disadvantaging public mobilisation that depends on near-term salience.[74] The pattern appears across Member States (as elaborated above).[75] German decisions on coal

[68] C Knill and Y Steinebach, "Crises as Driver of Policy Accumulation: Regulatory Change and Ratcheting in German Asylum Policies between 1975 and 2019" (2022) 16 Regulation & Governance 603; K Gupta and others, "Coalition Opportunity Structures and Policy Change: A Comparative Analysis of Nuclear Facility Siting Efforts in the US" in HC Jenkins-Smith and CM Weible (eds), *The Advocacy Coalition Framework* (Springer 2025).

[69] The explanation would be weakened if sustained environmental mobilisation occurred during a crisis of comparable intensity and duration, or if major rollbacks proceeded with robust public participation despite attention scarcity.

[70] M Lee, *EU Environmental Law: Challenges, Change and Decision-Making* (Hart Publishing 2005).

[71] M Eliantonio, "The Proceduralisation of EU Environmental Legislation: International Pressures, Some Victories and Some Way to Go" (2015) 8 Review of European Administrative Law 99; Á Ryall, "Enforcing the Environmental Impact Assessment Directive in Ireland: Evolution of the Standard of Judicial Review" (2018) 7 Transnational Environmental Law 515.

[72] Case C-72/12 *Gemeinde Altrip and Others v Land Rheinland-Pfalz* EU:C:2013:712, Judgment of 7 November 2013.

[73] European Environment Agency, "COVID-19 and Europe's Environment: Impacts of a Global Pandemic" (European Environment Agency 2020) Briefing No 13/2020.

[74] T Hocherman, T Trop and A Ghermandi, "Time Lags in Environmental Governance: A Critical Review" (2025) 54 Ambio 2042.

[75] See, for example, C Flachsland and S Levi, "Germany's Federal Climate Change Act" (2021) 30 Environmental Politics 118; Knauff (n 61); M Pantić and others, "Challenges and Opportunities for Public Participation in Urban and Regional Planning during the COVID-19 Pandemic – Lessons Learned for the Future" (2021) 10 Land 1379; F De Leonardis, "The Precautionary Principle and the Management of Epidemiological Emergencies: From Ad Hoc Response Measures to Advance Planning Policies" (2021) 13 Italian Journal of Public Law 6; E Kula, Z Wróblewski and A Starościc, "The Conflict over Białowieża Forest in the Light of Philip Kitcher's Ideal Deliberation" (2024) 73 Environmental Management 481.

and industrial operations occurred while the health emergency dominated parliamentary time. Italian emergency legislation compressed participation windows. Coastal works in parts of Spain proceeded under conditions limiting face-to-face scrutiny. Polish forest management controversies continued alongside pre-existing litigation, in an environment where concurrent attention appears to have diminished. French inspections were reportedly postponed, with consequences that will manifest only over years. None of this required abandoning the law. The theoretical point is that law's time-sensitive participation and review functions can operate formally while collective attention is occupied elsewhere.

The second vulnerability is administrative dependence on continuous monitoring. EU environmental law is not self-executing in the strong sense; it relies on a bureaucratic infrastructure of inspectors, scientists and coordinators to make texts bite.[76] The Habitats and Birds Directives assume ongoing surveillance of conservation sites, periodic reporting and responsive enforcement when pressures are detected. EIA presupposes not just documents but site visits and inter-agency verification; industrial emissions rules presuppose routine and unannounced inspections. Under conditions of crisis, lockdowns and emergency redeployments would disrupt these routines. Automated sensing, satellite feeds and operator self-monitoring continue to generate data, but visits, sampling, interviews and multi-agency coordination are expected to slip. Reports from the pandemic period support this prediction.[77] Where authorities rely more heavily on operator-submitted documentation, the risk profile shifts: the capacity to contest technical claims in real time narrows, and the deterrent effect of potential inspection weakens.[78] French sanitary restrictions reportedly led to postponements in inspection calendars; Italian authorities used emergency norms to manage procedural timetables; Spanish coastal enforcement faced practical obstacles to onsite verification; German regulators balanced public-health constraints with permitting decisions. These developments fit the predicted pattern: the law remains in place while monitoring capacity diminishes. This is particularly relevant as the credibility of compliance systems depends on the expectation of inspection and prompt corrective action, not only on paper duties.[79] When that expectation weakens for extended periods, behaviour rationally shifts, and violations are more likely to persist undetected or unremedied until attention returns.[80]

The third vulnerability is relational. Environmental accountability depends on an unbroken chain running from the discovery of harm to its remedy. The links are familiar: detection, measurement, reporting, investigation, litigation, enforcement. But the chain breaks if any single link fails for long enough.[81] Under conditions of sustained crisis, several links would come under simultaneous strain. The Aarhus Convention's guarantees remain formally available, but their conversion into effective claims would be impeded by reductions in attention and capacity at multiple stages. The COVID-19 period points to this

[76] N Gunningham, "Enforcing Environmental Regulation" (2011) 23 Journal of Environmental Law 169; M Hedemann-Robinson, "Environmental Inspections and the EU: Securing an Effective Role for a Supranational Union Legal Framework" (2017) 6 Transnational Environmental Law 31; TA Börzel and A Buzogány, "Compliance with EU Environmental Law. The Iceberg Is Melting" (2019) 28 Environmental Politics 315.

[77] R Bratspies and others, "Environmental Law, Disrupted by COVID-19" (2021) 51 Environmental Law Reporter 10509; LM Nyiwul, "COVID-19 and the Environmental Regulatory Response: Compendium of Regulatory, Ad Hoc Changes and Implications" (2023) 3 Environmental Protection Research 26.

[78] See, for example, A García, R Ruggeri and M Grácio, *Use of Duty-Holders Self-Monitoring and Reporting of Air Emissions on Compliance Assurance* (IMPEL Report No 2022(1)WG 6, March 2025).

[79] Gunningham (n 76).

[80] For foundational work arguing that compliance behaviour responds to enforcement visibility and perceived inspection probability, see RA Kagan and JT Scholz, "The 'Criminology of the Corporation' and Regulatory Enforcement Strategies" in K Hawkins and JM Thomas (eds), *Enforcing Regulation* (Kluwer Nijhoff 1984).

[81] Kramarz and Park (n 17); Gunningham (n 76). See also R Baldwin, M Cave and M Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (2nd edn, Oxford University Press 2012).

dynamic.[82] The CJEU's case law recognises both the importance of meaningful participation and the need for effective access to courts: *Trianel* clarified that environmental NGOs must be able to contest permitting decisions that fall within the scope of EU environmental law.[83] *Lesoochranárske zoskupenie* required national courts to interpret domestic rules consistently with Aarhus to ensure environmental organisations have standing to challenge decisions liable to contravene EU nature protection.[84] *Edwards and Pallikaropoulos* and *Commission v United Kingdom* emphasised that litigation costs must not be prohibitively expensive for claimants.[85] These principles do not disappear during crises. But the probability of timely activation seems to decline when staffing, media capacity and court operations are simultaneously constrained. Under such conditions, even detected violations would struggle to move through measurement and reporting into investigation and courtroom pleadings within periods when injunctions or suspensive relief would be most effective. The COVID-19 period, with its well-documented constraints on court operations and civil-society capacity, provides an illustration of how such conditions can impede the accountability chain. In such contexts, "temporary derogations" or "emergency adjustments" become permanent arrangements – a pattern that matches developments observed during and after the pandemic.

The fourth vulnerability is distributional. Benefits of non-compliance and deregulation are concentrated and immediate, while harms are diffuse and delayed.[86] Environmental law is often tasked with internalising externalities that markets would otherwise spread across space and time – whole ecosystems and future generations.[87] When attention is fractured, the actors who gain from deregulation (specific energy utilities, industrial operators, developers) have both the strongest incentive to act decisively in narrow time windows and the organisational capacity to do so. The losses they externalise are dispersed across populations and timescales: incremental respiratory morbidity linked to air quality; biodiversity loss compounded by missed breeding seasons; coastal erosion locked in by decisions that are hard to reverse once concrete is poured. EU instruments aim to rebalance this asymmetry through participation rights under Aarhus and the EIA Directive, the prospect of judicial review under national procedures shaped by *Trianel* and *Lesoochranárske*, and the "not prohibitively expensive" standard elaborated in *Edwards* and

[82] The UN issued a statement in September 2020 reminding Parties that the COVID-19 pandemic could not justify restrictions on public rights of access to environmental information, participation or justice under the Aarhus Convention. The need for such a clarification reveals that, in practice, these rights were already under strain. United Nations Economic Commission for Europe, Statement on the application of the Aarhus Convention during the COVID-19 pandemic and the economic recovery phase (Adopted 2 September 2020 by the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Geneva (online), 6–10 July 2020) ECE/MP.PP/2020/5/Add.1. See also W Menezes and H Marcos, "International Law Post-Pandemic" in GLO Salinas (ed), Lo Multidisciplinario del Antes y Después del Covid-19 (Thomson Reuters 2020).

[83] Case C-115/09 *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland (Trianel)* EU:C:2011:289, Judgment of 12 May 2011.

[84] Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* EU:C:2011:125, Judgment of 8 March 2011.

[85] Case C-260/11 *Edwards and Pallikaropoulos v Environment Agency and Others* EU:C:2013:221, Judgment of 11 April 2013; Case C-530/11 *European Commission v United Kingdom of Great Britain and Northern Ireland* EU:C:2014:67, Judgment of 13 February 2014.

[86] JP Shimshack, "The Economics of Environmental Monitoring and Enforcement" (2014) 6 Annual Review of Resource Economics 339; Atkinson (n 18); L Efthymiou, N Tsiamis and KP Tsagarakis, "Compliance with the European Environmental Law: Leaders and Laggards" (2025) 10 Euro-Mediterranean Journal for Environmental Integration 4251.

[87] M Faure, "Economics Methods in Non-Doctrinal Environmental Law Research" in P Martin and others (eds), *Non-doctrinal Research Methods in Environmental Law* (Edward Elgar Publishing 2023); M Van Noordwijk and others, "Five Levels of Internalizing Environmental Externalities: Decision-Making Based on Instrumental and Relational Values of Nature" (2023) 63 Current Opinion in Environmental Sustainability 101299.

*Commission v United Kingdom*. Each of these depends on mobilised constituencies and accessible counsel.[88] Those are precisely what would be hardest to assemble and deploy when public attention is consumed by daily emergency briefings and household-level crisis management. Measures framed as short-term pragmatism for industry or infrastructure can be taken and implemented while scrutiny is weakest, and can then shape the factual baseline against which any later challenge must be judged. The pattern identified above accords with this dynamic: law remains formally intact, but the payoff matrix changes when the audience that normally watches and contests decisions is structurally constrained.

### 3. Convergent incentives and regulatory limits

The foregoing analysis suggests a mechanism that recurs across Member States despite differences in political systems and regulatory culture: when crises command immediate attention, environmental rollback can proceed with limited contestation. The COVID-19 pandemic provides an illustration consistent with this mechanism, but the conditions persist beyond the pandemic. Formal rights remained in place, yet practical capacity to exercise them was constrained as attention fragmented. The problem is that attention-dependent legal regimes presume sustained attention but cannot guarantee it, and environmental law is the case where this vulnerability becomes most visible. These vulnerabilities are not quirks that will recede as memories of COVID-19 fade. Similar windows open with energy, migration, economic and security crises – concentrated private interests act while diffuse public interests cannot effectively resist.

The energy crisis following Russia's invasion of Ukraine exhibited the same structure. From early 2022, public discourse narrowed around supply security, price spikes, winter heating, industrial shutdown risks and sanctions. Within that window, significant environmental flexibilities were adopted. Germany reintroduced coal-fired units from reserve and authorised liquefied natural gas (LNG) import terminals under accelerated procedures with compressed consultations.[89] Other Member States likewise relaxed caps or timelines on conventional generation. Union-level instruments enabled shortened timetables and prioritised "security of supply."[90] Measures were often framed as temporary necessities, yet by 2025 several emergency authorisations had become part of medium-term infrastructure planning. The pattern was consistent with the vulnerabilities identified in Section III.2: environmental instruments remained formally in force while the probability that participation would be acted upon within relevant windows declined.[91]

[88] G De Baere and JT Nowak, "The Right to Not Prohibitively Expensive Judicial Proceedings under the Aarhus Convention and the ECJ as an International (Environmental) Law Court: *Edwards and Pallikaropoulos*" (2016) 53 Common Market Law Review 1727. This is particularly true for NGOs, see S Kingston and others, "Empowering Through Law: Environmental NGOs as Regulatory Intermediaries in EU Nature Governance" (2023) 12 Transnational Environmental Law 469; C Abbot and M Lee, "NGOs Shaping Public Participation Through Law: The Aarhus Convention and Legal Mobilisation" (2024) 36 Journal of Environmental Law 85.

[89] Federal Ministry for Economic Affairs and Climate Action, "Cabinet Boosts Crisis Preparedness for the Coming Winter" (28 September 2022); Federal Council (Bundesrat), "Draft Legislation Amending the LNG Acceleration Act Adopted" (7 July 2023).

[90] Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy [2022] OJ L335/36; Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas [2022] OJ L206/1; Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices [2022] OJ L261I/1; Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders [2022] OJ L335/1.

[91] European Commission, *Energy Emergency – Preparing, Purchasing and Protecting the EU Together*, COM (2022) 553 final, 18 October 2022; European Commission, "EU action to address the energy crisis" (February 2025). See also

Understanding why distraction endures even once recognised requires situating it within two distinct profit logics that operate inside contemporary capitalism. The first is the familiar incentive of capital to externalise environmental costs wherever possible. Compliance with emissions limits, conservation duties, monitoring obligations and remediation funds is expensive; any reduction in the probability or intensity of enforcement raises returns.[92] The second is the business model of platform capitalism, which commodifies attention by rewarding engagement and, under the specific architectures described in Section II.3, a fragmented modality of engagement in particular.[93] Engagement metrics convert novelty, outrage, and rapid update cycles into revenue and investments.[94] The economic system monetises the very self-optimising impulses that individuals experience as freedom, ensuring that distraction reproduces itself without overt coercion.[95] Thus, fragmented attention is the commodity form of the digital economy. The same metrics that generate value for platforms corrode the temporal and organisational conditions on which legal accountability depends, environmental accountability foremost among them.

A conventional approach to reform would treat distraction as a governance failure remediable by transparency, audits or media literacy. But these remedies do not neutralise the underlying incentives: requiring platforms to reveal how their algorithms amplify content does not change the profitability of fragmentation. So long as engagement drives value, platforms rationally optimise for it. These logics align without necessary coordination. Platform algorithms are indifferent to content as long as it sustains engagement. In practice, that indifference systematically benefits actors whose projects profit from evading scrutiny during short windows.[96] Acute environmental crises themselves supply high-engagement content while also justifying emergency flexibilities; both dynamics displace attention from the slow, technical work of oversight. And the loop is self-reinforcing: crisis saturates feeds and agendas; saturation lowers the probability of contestation; deregulatory moves proceed; weakened constraints contribute to future crises that will, in turn, monopolise attention. In short, distraction is a systemic outcome rather than a temporary aberration – not because extractive industries and platforms coordinate strategies, but because their distinct profit-maximising logics converge structurally. Indeed, the absence of deliberate coordination makes the alignment more durable, not less significant.[97] It does not depend on fragile agreements between sectors that antitrust or conspiracy law might reach, but on independent profit-maximising logics that converge on the same structural outcome. Coordination can be disrupted; convergent incentives persist until the underlying business models change.

M Giuli and S Oberthür, "Third Time Lucky? Reconciling EU Climate and External Energy Policy during Energy Security Crises" (2023) 45 Journal of European Integration 395.

[92] W Gray and R Shadbegian, "Economics of Environmental Compliance and Enforcement" in *Oxford Research Encyclopedia of Environmental Science* (Oxford University Press 2021).

[93] P González de la Torre, M Pérez-Verdugo and XE Barandiaran, "Attention Is All They Need: Cognitive Science and the (Techno)Political Economy of Attention in Humans and Machines" (arXiv, 10 May 2024) <https://arxiv.org/abs/2405.06478> (last accessed 30 October 2025).

[94] N Srnicek, *Platform Capitalism* (Polity 2017).

[95] Han (n 19).

[96] A Christin and others, "Internal Fractures: The Competing Logics of Social Media Platforms" (2024) 10 Social Media + Society; F Germano, V Gómez and F Sobbrio, "Ranking for Engagement: How Social Media Algorithms Fuel Misinformation and Polarization" (Barcelona School of Economics, Department of Economics and Business, Universitat Pompeu Fabra 2025) Working Paper 1501 <https://bw.bse.eu/wp-content/uploads/2025/07/1501.pdf> (last accessed 27 January 2026).

[97] The relationship described here resembles what Weber termed "elective affinity" (*Wahlverwandtschaft*) – a mutual reinforcement between cultural or economic forms that operates without intentional coordination. M Löwy, "Le Concept d'Affinité Élective Chez Max Weber" (2004) 127 Archives de Sciences Sociales des Religions 93.

Neither framework, environmental nor digital, addresses the underlying structural problem. European environmental governance remains institutionally sophisticated, but several core instruments implicitly treat attention as abundant and evenly distributed when it is neither. Digital regulation, for its part, does not yet secure the attentional preconditions that attention-dependent legal regimes require. Requiring platforms to boost environmental content visibility under the DSA's systemic-risk framework might seem attractive. But this crosses what Husovec identifies as the Commission's "red line": content-specific mandates implicating speech protections even when the content is lawful.[98] The constraint reveals something theoretically significant: legal frameworks designed for an era of information scarcity and government censorship struggle to address private actors who manipulate attention allocation rather than suppress speech. As Wu has argued in the US constitutional context, the First Amendment doctrine becomes "obsolete" when the threat is not state suppression but the weaponisation of speech itself through flooding tactics – a structural gap that EU law confronts in different doctrinal terms but with similar effect.[99] Law cannot mandate attention to particular subjects without confronting the boundary between platform regulation and speech control.

The broader debate on platform intervention offers several families of response: antitrust action targeting attention-market concentration; restrictions on behavioural advertising that funds engagement-maximising design; interoperability mandates that reduce platform lock-in; and direct limits on recommender optimisation. Each addresses part of the causal chain identified above, but each also faces the constraint that platforms operate transnationally while regulatory authority remains fragmented. Procedural tools, such as disclosure and consultation design, also merit attention not because they are sufficient, but because they operate within existing EU competences and target a vulnerability environmental governance presents in particularly acute form: the mismatch between attention-dependent accountability mechanisms and attention-fragmenting information environments. The value of these proposals lies less in their efficacy than in what their limits reveal: the law cannot secure its own preconditions when those preconditions are systematically undermined by the economy within which law operates.

One procedural proposal, drawing on Cobbe and Singh's framework for the regulation of recommending, would require platforms to disclose how ranking and recommendation systems (the algorithmic amplification, variable reward schedules, and infinite scroll interfaces) affect the visibility of public consultations, without mandating altered rankings.[100] Their framework targets the *activity* of recommending rather than the content recommended, a distinction that avoids the speech-control problems Husovec identifies. It is worth noting that the distinction between activity and content has not held up cleanly in CJEU case law. In *Peterson v Google and YouTube*, and in *Elsevier v Cyando*, the Grand Chamber treated the activity of recommending videos as part of the ordinary operation of a hosting platform, not as a mark of active contribution sufficient to trigger primary liability for communication to the public. The DSA has nevertheless carved out recommender systems as a distinct object of duties for transparency and risk assessment, and it is that narrower procedural trajectory, rather than Cobbe and Singh's broader reading of liability, that the disclosure proposal here tracks.[101] Whether such disclosure would change behaviour remains uncertain. Keller has shown how

[98] M Husovec, "The Digital Services Act's Red Line: What the Commission Can and Cannot Do about Disinformation" (2024) 16 Journal of Media Law 47; M Husovec, *Principles of the Digital Services Act* (1st edn, Oxford University Press 2024).

[99] T Wu, "Is the First Amendment Obsolete?" (2018) 117 Michigan Law Review 547.

[100] J Cobbe and J Singh, "Regulating Recommending: Motivations, Considerations, and Principles" (2019) 10 European Journal of Law and Technology 1.

[101] Joined Cases C-682/18 and C-683/18 *Peterson v Google and YouTube LLC; Elsevier Inc v Cyando AG* EU:C:2021:503, Judgment of 22 June 2021, paras. 77–84. On the DSA's treatment of recommender systems, see Regulation (EU) 2022/2065 (DSA), arts. 27 and 38.

laws using "design" or "systems" language often function as euphemisms for content mandates, and the line between speech-restrictive and non-speech-restrictive design regulation can be difficult to draw in practice.[102] Structural incentives toward engagement would persist regardless of disclosure requirements.

On the environmental law side, "distraction-resistant" review periods could be mandated for major rollbacks and high-impact infrastructure. These would establish minimum intervals between proposal and adoption that cannot run exclusively during declared emergency periods, alongside duty-to-consult provisions calibrated for conditions of crisis.[103] Public funding could underwrite baseline monitoring and inspection capacity that does not depend entirely on NGO attention or variable media interest. Union-level coordination could reduce the scope for cross-border arbitrage whereby one Member State advances deregulatory measures while Union-level scrutiny is focused elsewhere. These interventions target the vulnerabilities identified in Section III.2: mandatory review intervals address temporal mismatch by ensuring decisions cannot crystallise while attention is elsewhere; public funding stabilises monitoring capacity independent of crisis-driven redeployments; Union-level coordination reduces the arbitrage that exploits fractured accountability chains; and platform disclosure requirements aim to rebalance the informational asymmetry between concentrated beneficiaries of deregulation and diffuse publics bearing environmental costs.

These proposed measures face clear structural limits, however. No legal instrument can compel prolonged focus across a population whose information environment is profitably engineered to fragment attention. Environmental law and digital regulation operate within, not outside, the incentive structure of contemporary capitalism. When engagement is the currency of platform value and distraction reduces enforcement risk for regulated industries, the result is a structural alignment that regulation can only partially counteract. The task for EU regulation, then, is twofold: to harden procedures against exploitation during crisis windows and to acknowledge, in doctrinal and policy design, that attention is a scarce resource. Without that recognition, the Union will continue to produce formally strong instruments whose effectiveness falters whenever attention is most limited.

## IV. Conclusion

Distraction is not a variant of disinformation or censorship but a distinct mechanism that reallocates attention away from the processes on which legal accountability depends. Environmental accountability is one such process, and a particularly vulnerable one. Recent crises illustrate how quickly this mechanism can activate: participation windows open and close with little engagement, inspections are postponed, and the chain from detection to remedy stalls. None of this required repealing instruments – only that attentional preconditions were absent long enough for decisions to crystallise. That persistence is structural: capital benefits when enforcement probability drops and platforms profit when fragmentation drives engagement. The alignment makes distraction a rational outcome of contemporary political economy, not a malfunction that better transparency alone can fix.

[102] D Keller, "Amplification and Its Discontents: Why Regulating the Reach of Online Content Is Hard" (2021) 1 Journal of Free Speech Law 227; D Keller, "Regulating Platform Risk and Design: ChatGPT Says the Quiet Part Out Loud" (22 August 2024) <https://cyberlaw.stanford.edu/blog/2024/08/regulating-platform-risk-and-design-chatgpt-says-the-quiet-part-out-loud/> (last accessed 27 January 2026).

[103] Compare Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 2014/52/EU) [2012] OJ L26/1, Arts. 6–7 (on consultation periods).

Realistic interventions exist, though they cannot dissolve the underlying structure. Law can harden procedures against exploitation in crisis windows, stabilise monitoring capacity so that it does not depend on fluctuating civil-society bandwidth, and require platforms to account for how ranking and recommendation practices bear on the visibility of regulatory oversight. These moves could reduce the number of decisions that become *fait accompli* while public eyes are elsewhere. But they do not dissolve the constraint that attention is finite and currently priced in ways that reward its fragmentation. No legal statute can, by itself, reverse the incentives that make distraction profitable. The task is therefore to design within that constraint: to treat attention as the scarce resource it has become and to calibrate participation and enforcement so they remain effective when attention is thinnest. This is not to suggest that environmental issues never achieve sustained visibility. Movements like Fridays for Future show that environmental concerns can command attention even amid competing crises.[104] But these breakthroughs share a common feature: they conform to platform logic – emotionally resonant and visually dramatic. The procedural vulnerabilities this article has examined (consultation windows, monitoring lapses, permitting flexibilities) lack these qualities. They are structurally invisible to an attention economy that rewards engagement over substance.

If there is a single lesson for environmental law in times of platform capitalism, it is that effectiveness now turns on sustaining the conditions of legality rather than merely perfecting its forms. Instruments will continue to deliver formal compliance while failing to secure the conditions of their own possibility whenever crises monopolise the public sphere. The measure of regulatory realism is to acknowledge that gap without abandoning ambition: to secure time, visibility, and capacity where they are most easily lost, and to resist the quiet conversion of emergency pragmatism into baseline regression. Until value accrues to sustained attention rather than its fragmentation, law will remain formally strong but substantively brittle. The deeper insight from Han's psychopolitics is that distraction endures not because it is imposed but because it feels rewarding. Regulation confronts not only structural incentives but a psychic economy that rewards the very behaviours that erode accountability.

**Acknowledgments.** The author is grateful to the Journal Editors and anonymous reviewers for their constructive engagement with the manuscript, which has greatly strengthened this work. Earlier versions benefited from feedback received at the "Law and Digital Distraction" symposium (Maastricht University, 2 October 2025), co-organised by the Law & Popular Culture Research Network and the Maastricht Law & Tech Lab. Particular thanks to Livia Solaro and Konrad Kollnig for convening the event and to Ishitaa Narwane for moderating. Thanks also to the author's Maastricht University colleagues Caroline Cauffman and Wen-Ting Yang, as well as to Ulrik Lyngs (Reduce Digital Distraction Project, University of Oxford), for their contributions to the panel. Any remaining errors are the author's own.

**Funding Statement.** Open access funding provided by Maastricht University.

**Competing interests.** The author declares none.

**Use of AI tools.** The author used QuillBot and Grammarly (web versions, accessed between October 2025 and April 2026) solely for grammar, spelling, and punctuation checking of author-written text. The tools were not used to generate, draft, paraphrase or suggest substantive content. All editorial decisions are the author's, and no text was retained without the author's review. The tools are accessible at https://quillbot.com and https://www.grammarly.com.

[104] J De Moor and others, "New Kids on the Block: Taking Stock of the Recent Cycle of Climate Activism" (2021) 20 Social Movement Studies 619.

**Cite this article:** H Marcos, "Digital Distraction and Environmental Deregulation: The Psychopolitics of Attention Fragmentation in Platform Capitalism". *European Journal of Risk Regulation*. https://doi.org/10.1017/err.2026.10106