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# ARTICLE 23 ON TRIAL

How oil and gas producers are challenging the EU's flagship CCS market-building measure

LEGAL BRIEF



2026



## Executive summary

**Article 23 of the Net-Zero Industry Act (NZIA) is the European Union's first large-scale market-creation measure aimed at accelerating the deployment of CO<sub>2</sub> storage infrastructure.** It requires oil and gas producers operating in the EU to contribute towards making 50 million tonnes of annual CO<sub>2</sub> injection capacity available to the market by 2030. The measure was introduced in response to a growing recognition that the lack of available injection capacity has become one of the main bottlenecks slowing the deployment of carbon capture and storage (CCS) in Europe.

**At the end of 2025, 15 legal cases have been brought against the European Commission by twelve groupings of obligated entities spanning eight Member States.** Together, these litigating entities account for more than 65% of the total injection capacity obligation. The cases challenge Article 23 of the [NZIA](#), the [Delegated Regulation](#) establishing the methodology for calculating companies' contributions, and the [Commission Decision](#) identifying the obligated entities and their respective shares of the target.

Although the litigants rely on different legal arguments, the cases ultimately seek to alter the obligation established under Article 23, including by challenging their scope, calculation, or applicability. The applicants raise claims relating to proportionality, equality and non-discrimination, subsidiarity, legal certainty, commercial freedom and property rights, the feasibility of the 2030 timeline, the absence of a formal impact assessment, alleged shortcomings in consultation procedures, and the Commission's use of delegated powers.

**This briefing assesses those claims against the objectives, structure and legal basis of Article 23.** It argues that many of the challenges face a high legal threshold under EU law. Article 23 forms part of a broader internal-market framework aimed at creating a functioning EU-wide market for CO<sub>2</sub> storage services and accelerating the deployment of strategic net-zero infrastructure. The measure was designed specifically to address the long-standing coordination failure in the CCS value chain, whereby capture projects, transport infrastructure and storage sites have each struggled to develop in the absence of the others.

**The briefing further argues that the obligation is directed at companies that**



**are uniquely positioned to help deploy early CO<sub>2</sub> injection capacity.** Oil and gas producers already possess much of the relevant subsurface expertise, infrastructure, operational experience and in-site geological data (e.g. storage capacity and reservoir characteristics) required for storage development. Many litigating entities have themselves publicly supported CCS deployment in Europe and identified carbon management as part of their future business activities.

**The cases, therefore, raise broader questions about the EU's ability to move from climate ambition to implementation.** If Article 23 is significantly weakened, delayed or subjected to prolonged legal uncertainty, the consequences are likely to extend beyond the courtroom. The outcome of the litigation could influence not only the future of the EU's CO<sub>2</sub> storage market, but also the wider credibility of EU industrial decarbonisation policy and the Union's ability to deploy the infrastructure needed to meet its climate neutrality objectives.

# Introduction

Article 23 of the Net-Zero Industry Act (NZIA)<sup>1</sup> is now at the centre of a major legal dispute, putting at risk the European Union's plans to deploy CO<sub>2</sub> injection capacity urgently needed for industrial decarbonisation.

This provision requires oil and gas producers in the EU to help deliver 50 million tonnes (Mt) of annual CO<sub>2</sub> injection capacity by 2030. This capacity is needed to permanently store CO<sub>2</sub> captured from industrial sectors such as cement and lime production. For many of these industries, CCS is one of the few viable options to address emissions that cannot realistically be eliminated through electrification, energy efficiency or other decarbonisation measures alone.

The Commission has estimated that the Union will require around 50 million tonnes of annual storage by 2030, and 250 million tonnes by 2050 to reach climate neutrality by 2050<sup>2</sup>, as laid down in the [European Climate Law](#). However, **given the scale of CO<sub>2</sub> injection capacity required, the current pace of deployment** – driven largely by the EU ETS carbon price and limited support from instruments such as the Innovation Fund and the Connecting Europe Facility (CEF) – **is insufficient to deliver the scale and speed of storage infra-**

**structure development needed to meet these targets.**

As a response to this challenge, the Commission proposed, and the co-legislators subsequently adopted with broad political support, the [Net-Zero Industry Act](#), and in it the Article 23 obligation. By obliging oil and gas producers to take the first step and make the investments into deploying the needed injection capacity, the **NZIA provides the policy certainty and investment confidence needed to unlock private investments in capture and transport infrastructure projects, thereby kick-starting the market for the technological abatement of CO<sub>2</sub> in Europe.**

However, in October 2025, a series of cases have been brought against the European Commission, challenging Article 23 itself and its [Delegated Regulation](#) that lays down the formula based on which the individual contributions to the 50 Mt are calculated, as well as the [Commission Decision](#) that lists the Obligated Entities (OEs) and their respective contributions to the overall target.<sup>3</sup>

For their part, many of the obligated entities bringing these challenges do not dispute the broader need to scale up CO<sub>2</sub> storage in Europe. At the 2024 Industrial Carbon Management Forum, for example, IOGP Europe Managing Director François-Régis Mouton described the 50 Mt target as “a reasonable objective for what we

1 See a short explainer here: [Article 23 – Explainer](#)

2 European Commission (2024), Towards an ambitious Industrial Carbon Management for the EU, available [here](#).

3 European Commission (2024), Regulation (EU) 2024/1735 of 13 June 2024 (“NZIA”), available [here](#); European Commission (2025), Commission Delegated Regulation (EU) 2025/1477 of 21 May 2025 supplementing Regulation (EU) 2024/1735 of the European Parliament and of the Council by specifying the rules on the identification of authorised oil and gas producers who are required to contribute to the objective of reaching the Union target for available CO<sub>2</sub> injection capacity by 2030, on the calculation of their respective contributions, and on their reporting obligations, available [here](#); European Commission (2025), Commission Decision (EU) 2025/1479 of 22 May 2025 specifying the pro rata contributions to the Union CO<sub>2</sub> injection capacity objective by 2030 from entities holding an authorisation as defined in Article 1, point 3, of Directive 94/22/EC of the European Parliament and of the Council, available [here](#).

need to achieve in the EU”.<sup>4</sup>

**The litigation therefore centres less on whether Europe needs a CO<sub>2</sub> storage market, and more on who should be responsible for delivering it and under what conditions. The applicants challenge both the substance of Article 23 and the way it was designed and implemented.** Their claims include arguments about proportionality, the 2030 timeline, the calculation and distribution of contributions, unequal treatment, the Commission’s use of delegated powers, legal certainty, procedural shortcomings, and the adequacy of the Commission’s reasoning and impact assessment.

**Important to note is that many of these obligated entities supported this legislation when it was proposed.** The International Association of Oil and Gas Producers (IOGP), representing nearly half of the obligated entities, signed an open letter<sup>5</sup> publicly and explicitly endorsing Article 23 (then Article 18) describing the obligation as “crucial” to unlock the storage Europe needs. Only once the obligated entities were identified by name and their respective contributions to the target were announced were these lawsuits introduced.

**The 12 obligated entities bringing 15 legal cases are challenging nearly every element of Article 23, deploying a broad range of legal arguments that seemingly seek to weaken or limit the success of a measure the sector had previously endorsed.** Their cases seek, in various combinations, to: (1) exempt themselves from the injection capacity obligation altogether by challenging the applicability of Article 23 or parts of the NZIA; (2) annul the Del-

egated Regulation setting out the formula used to calculate each company’s share of the obligation; and/or (3) annul the Commission Decision identifying the obligated entities and specifying their respective contributions towards the 50 Mt target.

Article 23 is an unprecedented measure requiring oil and gas producers to invest their own capital into deploying CO<sub>2</sub> injection capacity in order to kick-start a European market for CO<sub>2</sub> storage and enable industrial decarbonisation. **If the challenges against Article 23 itself are successful, one or more companies could be exempted from the obligation, undermining the delivery of the overall target. If the challenges against the Delegated Regulation or Commission Decision succeed, the Commission could be forced to recalculate and redistribute the obligations among companies, delaying implementation by years and placing the 2030 target, and by extension the EU’s climate goals, effectively out of reach.**

This briefing examines the main legal and policy arguments raised in the fifteen cases brought against the European Commission, and assesses them against the objectives, structure and legal basis of Article 23. By bringing a wide-ranging set of legal challenges, the applicants are putting significant legal pressure on the Regulation at a critical stage of its implementation. **While the claims differ in substance, many ultimately seek to weaken, delay or avoid the obligations created by the Regulation at a moment when rapid deployment of CO<sub>2</sub> storage infrastructure is urgently needed.**

<sup>4</sup> EU Energy (2024), ICM FORUM – PAU – October 10, 2024, available [here](#).

<sup>5</sup> IOGP (2023), Letter: Strong support for an implementable and pragmatic Net Zero Industry Act Article 18 – solutions to make CCS work, available [here](#).

While Europe is attempting to move from climate ambition to implementation, **prolonged legal uncertainty around one of the EU's first market-creation measures for CO<sub>2</sub> storage - even if the challenges ultimately prove unsuccessful in court - risks slowing investment and delaying deployment across the wider CCS value chain.** The outcome of these cases will therefore shape not only the implementation of the injection capacity obligation under Article 23 but could also influence the Union's broader approach to industrial decarbonisation, carbon management and the build-out of strategic climate infrastructure.

## Who is bringing the challenges?

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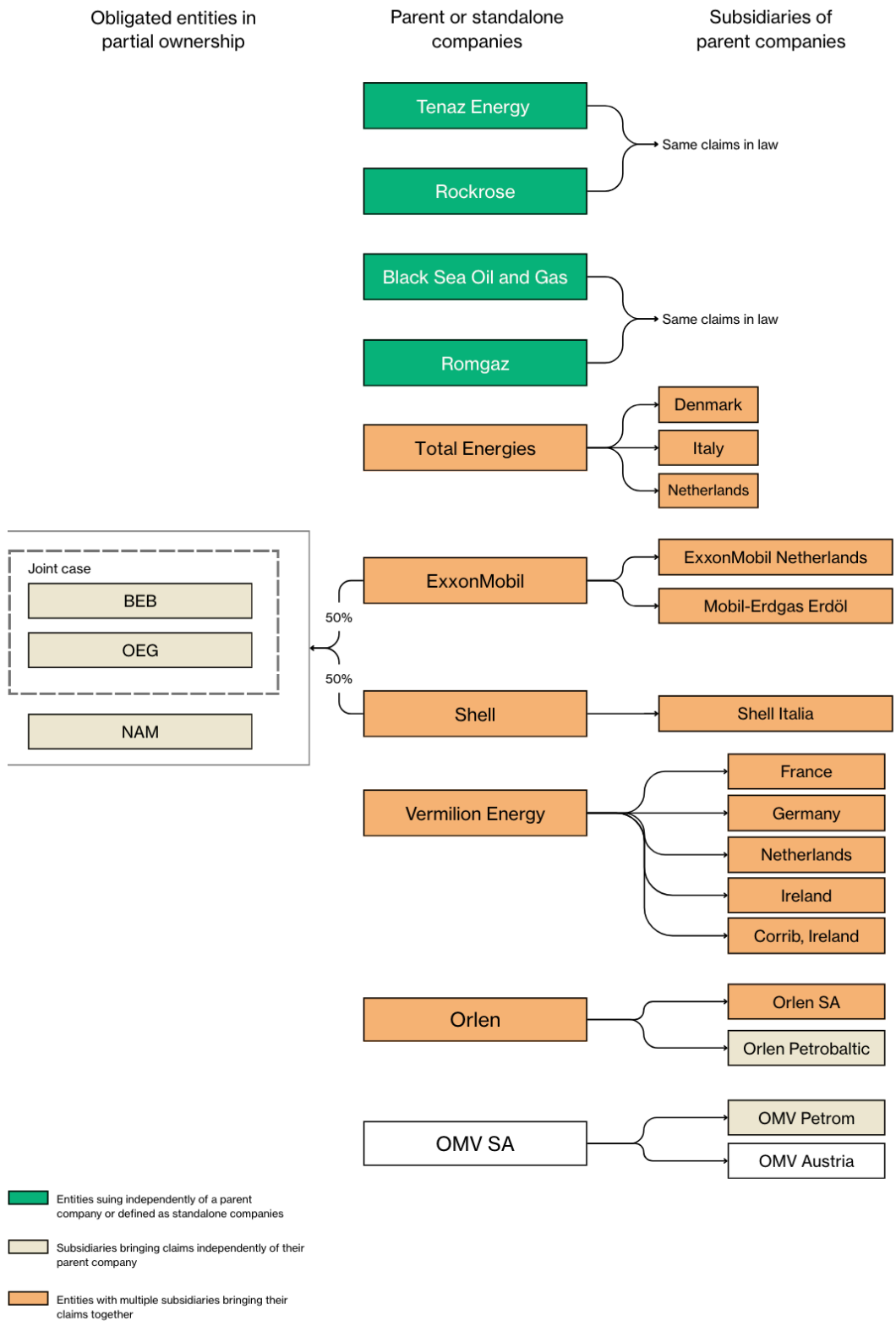
15 cases have been brought by 12 groupings spanning eight Member States against different elements of the Article 23 obligation. The litigants represent a wide range of business models, ownership structures and national contexts, including multinational oil and gas majors, state-owned or state-controlled companies, independent upstream producers and smaller regional operators. The cases also reflect the fragmented ownership structures common in the European upstream sector, where subsidiaries and joint ventures often operate as separate legal entities despite being linked to the same parent companies.

Several companies have coordinated their legal actions. ExxonMobil Producing Netherlands and Mobil Erdgas und Erdöl are bringing joint cases, and BEB Erdgas und Erdöl and Oldenburgische Erdölgesellschaft have likewise filed together. Sub-

sidaries of Vermilion and TotalEnergies are similarly grouped in certain proceedings. Other entities are acting independently. OMV Petrom, for instance, has brought a standalone challenge despite its parent company, OMV Austria, also being subject to the obligation and not having filed a lawsuit.

The litigants also differ considerably in ownership structure. Some, such as Tenaz, RockRose, Black Sea Oil & Gas and Romgaz, are standalone or nationally rooted companies. Others are subsidiaries of large integrated international oil and gas groups. Two litigant entities, Romgaz and Orlen, are state-owned or state-controlled companies, adding a further political dimension to the disputes. In addition, several litigants are linked through overlapping ownership structures. BEB Erdgas und Erdöl, Oldenburgische Erdölgesellschaft and NAM are all jointly owned by Shell and entities affiliated with ExxonMobil, illustrating how a relatively small number of parent companies are connected to multiple legal challenges.

The diagram on the next page attempts to explain the legal and ownership structures of the litigation entities:



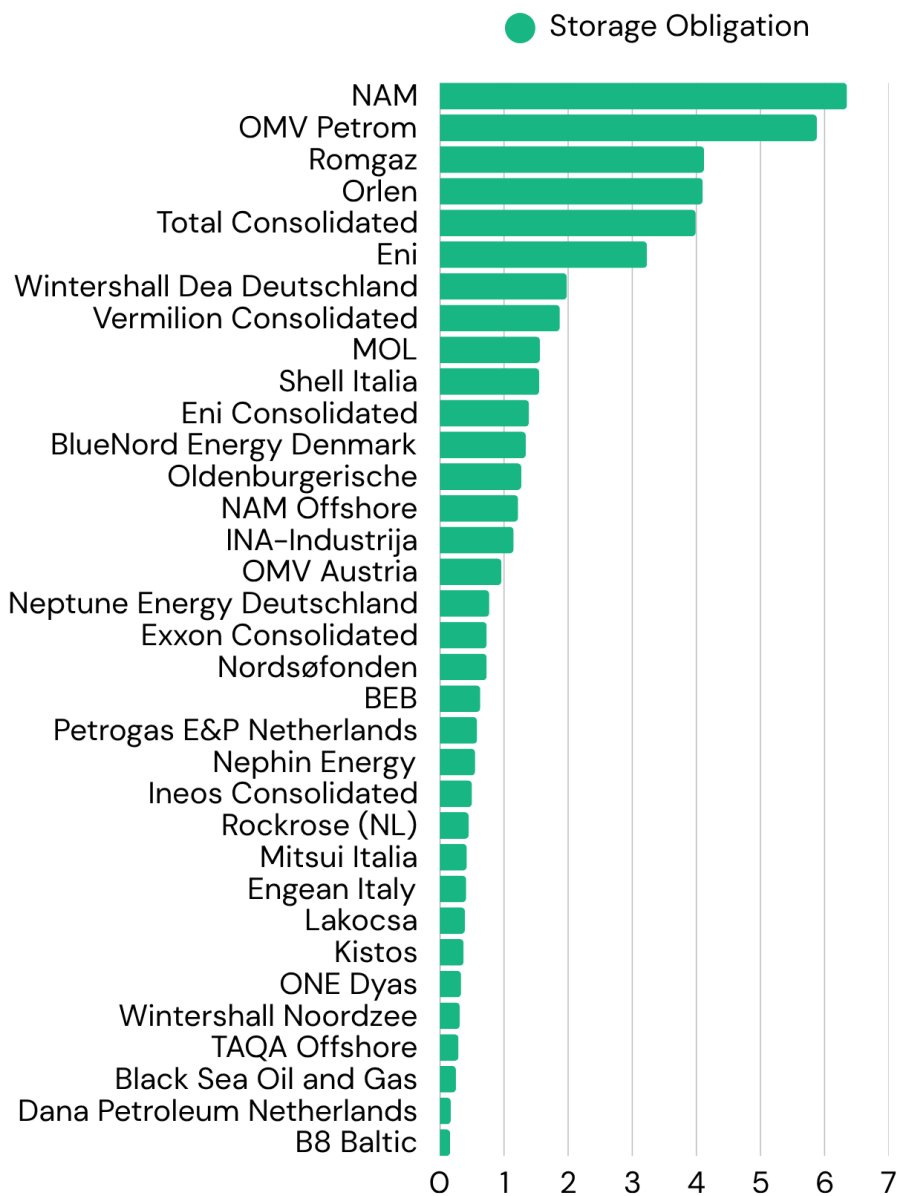
Note: 'same claims in law' refers to the entities bringing the claim together, while a case with the same pleas in law is a grouping that.

The 50 Mt annual CO<sub>2</sub> injection capacity target was allocated on a pro-rata basis among the 44 largest oil and gas producers in the EU, according to their production volumes between 2020 and 2023. The litigating entities account for more than 65% of the overall target, meaning that **over**

**half of the EU's planned CO<sub>2</sub> injection capacity is now subject to litigation. When subsidiaries and affiliated entities are considered together, the five corporate groups with the largest injection capacity obligations are all challenging some aspect of Article 23.**

Figure 3: Division of the injection capacity target among obligated entities.

### Storage Obligation of Litigating Entities



# Challenging the legal foundations of Article 23

We outline the various legal claims brought against Article 23 the Delegated Act and the Decision and assess the legal soundness and implications of the arguments advanced by the entities. In doing so, we draw on findings from the Article 23 Progress report (published March 2026), as well as a legal analysis prepared for an<sup>6</sup>

Claim	Times In-voked	Companies Invoking
Proportionality Strico Sensus	12	OMV Petrom, Shell, ExxonMobil, BEB and OEG, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies
Right to Commercial Freedom	11	Shell, ExxonMobil, BEB and OEG, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies
Impossibility of timeline	10	OMV Petrom, Shell, ExxonMobil, BEB and OEG, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies
Equality and Discrimination	10	OMV Petrom, Shell, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies
EU Overreach	7	OMV Petrom, ExxonMobil, BEB and OEG, Black Sea, Romgaz, Tenaz (NAM Offshore), Orlen
Non-Retroactivity	7	Shell, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), Orlen
Lack of Impact Assessment	6	OMV Petrom, Shell, Black Sea, Romgaz, Orlen, TotalEnergies
Consultation	6	Shell, Black Sea, Romgaz, NAM, Orlen, TotalEnergies
Methodology and Data used	6	OMV Petrom, Shell, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies
Right to Property	6	Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), Orlen

Table 1: Claims made and their frequency. Note: this table is based on information available on Curia and may not fully reflect how frequently these claims were actually argued before the Court.

6 Bellona Europa and Carbon Balance Initiative (2026) *Amicus Curiae: Obligated entities under Art. 23 NZIA v. Commission* (Cases T-711/25 to T-730/25).

Where appropriate, similar arguments have been grouped together for clarity, as many entities raise comparable claims under slightly different formulations.

Although the litigants rely on different legal arguments, they ultimately seek the same outcome: **limiting or overturning the obligations created by Article 23 of the NZIA.**

The litigants are challenging three separate legal acts underpinning the Article 23 obligation: Article 23 of the NZIA itself, the Delegated Regulation specifying how the obligation is calculated and allocated, and the Commission Decision identifying the obligated entities and their respective contributions. **These challenges can lead to two different types of legal outcomes.**

One, they ask the Court to annul, under Article 7, the identification of the obligated entities setting out the rule used to identify those entities and the formula to calculate the obligation. **If successful, these challenges would undermine the implementation of Article 23, forcing the Commission to restart the allocation process and adopt a new Delegated Regulation and Commission Decision. This would delay the deployment of critical CO<sub>2</sub> storage infrastructure by years, placing the 2030 deadline out of reach.** [Delegated Regulation](#) setting out the rule used to identify those entities and the formula to calculate the obligation. **If successful, these challenges would undermine the implementation of Article 23, forcing the Commission to restart the allocation process and adopt a new Delegated Regulation and Commission Decision. This would delay**

**the deployment of critical CO<sub>2</sub> storage infrastructure by years, placing the 2030 deadline out of reach.**

Second, several litigants are seeking to be exempted from the Article 23 obligation altogether. They request a declaration of inapplicability under A<sup>8</sup>, in respect of Article 23. **Unlike annulment, this would apply only to the individual applicants, exempting them from the obligation while leaving the legislation formally in force. To succeed, applicants must prove that they are specifically and adversely affected.**

The Court assesses both annulment and inapplicability claims on similar grounds: lack of competence, procedural errors, infringement of EU law, or misuse of powers. Many of the filed cases rely on grounds across those four categories.

In practice, many of the cases centre around the question of proportionality. Namely, whether the obligations imposed on companies are justified in light of the EU's objective of scaling up CO<sub>2</sub> injection capacity for industrial decarbonisation. The Court typically grants a high level of discretion to EU institutions in complex policy areas, intervening only where a measure is "manifestly inappropriate." Fundamental rights, such as property and commercial freedom, may also be limited where justified by public interest objectives.

Overall, applicants face a high threshold: they must show that the burden placed on them is disproportionate even in light of the broader public interest: achieving a

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<sup>7</sup> European Union (2012), Consolidated version of the Treaty on the Functioning of the European Union, available [here](#). Article 263 TFEU allows the Court of Justice of the European Union to review the legality of acts adopted by EU institutions, including Commission decisions and delegated acts, and to annul them where they are found to breach EU law or procedural requirements.

<sup>8</sup> Ibid. Article 277 TFEU allows parties in proceedings before the Court of Justice of the European Union to challenge the applicability of a broader EU act indirectly, even where they are not seeking its formal annulment. If successful, the provision would not apply to the individual applicants in the specific case.

functional internal CO<sub>2</sub> storage market in the European Union and having 50 Mtpa of CO<sub>2</sub> injection capacity available to the market by 2030.

## Proportionality | Is Article 23 a proportionate response to Europe's CO<sub>2</sub> storage gap?

**Argument put forward by:** OMV Petrom, Shell, ExxonMobil, BEB and Oldenburgische Erdölgesellschaft mbH (OEG), Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies

Proportionality is a general principle of EU law, set out in Article 5(4) TEU<sup>9</sup>, and it appears across the litigation in different forms. In simple terms, the argument is about whether it's justified for the EU to require a specific group of oil and gas companies to help deliver 50 Mt of annual CO<sub>2</sub> injection capacity by 2030. It should be noted that this target should be understood as an initial step rather than the end goal, as the Commission has indicated that the EU will need around 250 Mtpa of CO<sub>2</sub> storage by 2050 to stay on track for climate neutrality<sup>10</sup>. Article 23 should thus be understood as a market-creation measure. Proportionality asks whether the EU has gone beyond what is necessary in pursuing a legitimate objective. The Court usually looks at three questions:

1. Is the measure suitable? In other words, is it capable of contributing to the objective pursued?
2. Is it necessary? Could the same objective have been achieved through a less restrictive measure?
3. Is the burden excessive? Do the

disadvantages imposed go beyond what can reasonably be justified by the aim pursued?

A number of the public case notices suggest that the applicants rely on each of these strands. One recurring line of argument is that focusing on CO<sub>2</sub> injection capacity alone does not address the entire CCS value chain and is therefore not the right policy measure to achieve the Union's objectives. However, the NZIA itself explains why the focus was placed on storage first. In Recital 39, the Regulation describes a "coordination failure" in the CCS market: industrial companies are hesitant to invest in CO<sub>2</sub> capture if they cannot be sure that storage sites will be available, while storage developers are reluctant to invest upfront before demand is secured. Recital 41 then identifies the lack of operational CO<sub>2</sub> storage sites as a key bottleneck slowing down CCS deployment in Europe. At the same time, Recital 40 makes clear that the broader objective is to develop full CCS value chains, including capture, transport and storage infrastructure. In that context, the 50 Mt target is intended to provide the initial incentive needed to create investment confidence across the wider CCS chain. Without storage, capture projects, transport infrastructure and long-term commercial arrangements cannot materialise at the pace necessary, reach final investment decisions, ultimately slowing down the emergence of a self-sufficient CO<sub>2</sub> market.

That design also reflects the role the sector itself has long claimed to play. Large oil and gas companies and industry associations have repeatedly presented themselves as best placed to help develop CO<sub>2</sub> storage

9 European Union (2012) Consolidated version of the Treaty on European Union, available [here](#)

10 European Commission (2024), Impact Assessment – Securing our future Europe's 2040 climate target and path to climate neutrality by 2050 building a sustainable, just and prosperous society, available [here](#).

because of their subsurface expertise.<sup>11</sup> In fact, in October 2022, the International Association of Oil and Gas Producers (IOGP) publicly urged the European Commission to set an ambitious CO<sub>2</sub> storage goal of 0,5–1 gigatonne per year by 2050, declaring that it was “time for Europe to get serious about CCS”.<sup>12</sup> At the time, IOGP also highlighted that its members had “the technical and operational know-how” to deliver such injection capacity and argued that an EU-wide storage ambition would trigger a “new wave of CCS projects”. Six of the litigating entities now arguing that Article 23 breaches the principle of proportionality, namely Shell, ExxonMobil, TotalEnergies, Romgaz, OMV Petrom and Orlen, are members of, or affiliated with, IOGP<sup>13</sup>.

Similarly, claims that the timeline is too demanding rest on the assertion that the targets are practically unattainable. Yet this argument depends heavily on empirical assumptions that are not clearly substantiated. Without concrete evidence that compliance is objectively unachievable, as opposed to merely difficult or costly, the claim made by the applicants would need to show that the target is manifestly unworkable in light of the objective pursued.<sup>14</sup> That is a high threshold, especially given that the framework itself recognises the possibility of delays and includes mechanisms to respond where the wider CCS chain is not developing in step with the storage obligation. This is discussed in more detail later in the brief.

On necessity, it is difficult to argue that

an intervention such as Article 23 was not necessary to create a functional carbon storage market in the EU. It is undeniable that the Union has not brought forward injection capacity at anything like the pace required. CCS has been recognised in the EU ETS framework since 2009, but that alone has not been sufficient to create a functioning storage market. As a result, storage remains the clearest bottleneck.<sup>15</sup> Without it, hard-to-abate sectors cannot rely on CCS as a realistic decarbonisation route, stalling investments on the capture and transport side.

## Charter rights: commercial freedom and property | Does Article 23 infringe upon the right to conduct a business?

**Argument put forward by:** Black Sea, Romgaz, Tenaz, Orlen, RockRose, Shell Italia, TotalEnergies, NAM, OMV Petrom, Exxon-Mobil, BEB, Vermilion

A significant number of the cases also rely on Articles 16 and 17 of the Charter of Fundamental Rights, which protect the freedom to conduct a business and the right to property<sup>16</sup>. In essence, it is argued that Article 23 imposes disproportionate obligations by requiring private undertakings to contribute to the development of CO<sub>2</sub> injection capacity, thereby interfering with their freedom to organise their business and exposing them to additional costs and

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<sup>11</sup> *Ibid.*, IOGP (2023).

<sup>12</sup> IOGP (2022), Europe needs a CO<sub>2</sub> storage ambition for 2050, available [here](#).

<sup>13</sup> IOGP (2026), our global membership, available [here](#).

<sup>14</sup> See Article 23(11) NZIA.

<sup>15</sup> CATF (2025), The storage gap: is Europe developing enough CO<sub>2</sub> storage capacity to meet demand?, available [here](#); European Commission (2025), Carbon Capture, Utilisation and Storage in the European Union – 2025 Status Report on Technology Development, Trends, Value Chains and Markets, available [here](#).

<sup>16</sup> European Union (2012), Charter of Fundamental Rights of the European Union, available [here](#).

risks. In some cases, the same point is also framed as an interference with property rights. This argument has been made both by entities that have existing carbon storage projects in the EU, such as TotalEnergies, and by those who have never invested in carbon storage or the CCS value chain prior to this legislation, such as Romgaz.

Rights that extend to businesses, such as commercial freedom and property, are not absolute rights and limitations can be placed on them for public interest concerns. The balancing act between Articles 16 and 17 versus a legislative regime is one that has been done many times, and in fact was acknowledged in the Recitals of the legislation itself.<sup>17</sup>

This is something that oil and gas producers have themselves acknowledged on several occasions.<sup>18</sup> Their core business already involves many of the same activities required for CO<sub>2</sub> storage, including subsurface exploration and reservoir management, drilling and maintaining wells, and operating complex offshore and onshore infrastructure.<sup>19</sup> As a result, these companies possess much of the technical expertise, operational experience and specialised knowledge needed to develop and manage CO<sub>2</sub> storage projects.<sup>20</sup>

The Court has also stated on several occasions that Articles 16 and 17 are not absolute rights and “subject to a broad range of public interest objectives”.<sup>21</sup> In other

words, the freedom to conduct a business includes the possibility of restrictions, especially where the aim is of general interest to the Union. The Court confirmed that impairment of the economic interests of a private entity must be considered “in relation to its social function” and where regulation corresponds to a general interest pursued by the Community, the Applicants will have to show that the very substance of their guaranteed rights have been hollowed out in order to constitute a “disproportionate and intolerable interference.”<sup>22</sup> The Court further confirmed that a Regulation placing costs on a private entity, even significant ones, is not enough to constitute a violation by itself.<sup>23</sup>

In the present case, Article 23 imposes a regulatory obligation in pursuit of a broader public objective: bringing enough CO<sub>2</sub> injection capacity to market to make industrial decarbonisation possible in practice. That objective is central to the main purpose of the NZIA, which aims to help establish a functioning market for CO<sub>2</sub> storage services. The obligation is also directed at companies that already operate in the subsurface, possess relevant geological expertise and infrastructure, and the litigating entities have themselves identified CO<sub>2</sub> transport and storage, CCUS, or broader decarbonisation activities involving subsurface CO<sub>2</sub> management as part of their future business strategy. This is also relevant in market terms. In some parts of Europe, demand for CO<sub>2</sub> storage is project-

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17 Recital 43 NZIA.

18 Zero Emissions Platform (2019), CO<sub>2</sub> Storage Safety in the North Sea: Implications of the CO<sub>2</sub> Storage Directive, available [here](#).

19 Intergovernmental Panel on Climate Change (2005), IPCC special report on carbon dioxide capture and storage, Cambridge University Press, available [here](#).

20 International Energy Agency (2022), CO<sub>2</sub> storage resources and their development, available [here](#).

21 Case C-283/11 (2013), Sky Österreich GmbH, ECLI:EU:C:2013:28, available [here](#)

22 Case C-210/03 (2004), Swedish Match AB and Swedish Match UK Ltd v Secretary of State for Health, ECLI:EU:C:2004:802, para 72, available [here](#).

23 Case C-491/01 (2002), The Queen v Secretary of State for Health ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd, para. 149, available [here](#).

ed to exceed available supply by as much as 144%, which suggests that bringing additional injection capacity to market is not only a regulatory requirement but also responds to a growing commercial need.<sup>24</sup>

This context weakens the contention that Article 23 compels the sector to engage in activities wholly alien to its existing role. On the contrary, many of the required activities build directly on capabilities, infrastructure and business areas that several companies are already developing or positioning themselves to expand into.

## Unfeasibility of completing projects by the 2030 deadline | Does Article 23 impose an unfeasible timeline for compliance?

**Argument put forward by:** OMV Petrom, Shell Italia, ExxonMobil, BEB and OEG, Black Sea, Romgaz, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies

One of the most common arguments raised in the litigation is that the 2030 deadline is simply not achievable. In broad terms, the applicants contend that, if the target cannot realistically be met, Article 23 must be regarded as disproportionate. On that basis, an infeasible target would undermine the legality of the provision, such that the Court should rule against the Commission, and that failure to meet such a target should not result in punitive measures for the obligated entities.

Part of that argument appears to rely on a

Wood Mackenzie report commissioned by several of the litigating companies.<sup>25</sup> The report states that based on current trajectories, the EU is set to have 32.5Mtpa of storage available to the market by 2030, rather than the 50Mtpa goal. The report attributes this gap largely to the time required to develop storage projects, estimating an average lead time of around seven years, which leaves insufficient time for obligated entities to meet their respective contributions by 2030. They would presumably argue that the legislation is “manifestly inappropriate” for attaining its objective, which is the standard the obligated entities must demonstrate before the Court.<sup>26</sup>

In contrast, analysis completed by Article 23 Watch<sup>27</sup> indicates that the Wood Mackenzie report relies on flawed assumptions, both as to the nature of compliance with the obligation and the current lead times of European carbon storage projects. It further appears to conflate commercial considerations with the requirements of legal compliance. In addition, mechanisms introduced in Article 23(5), such as third-party storage and joint ventures, bring a substantial degree of flexibility for undertakings that are unable to develop storage infrastructure independently. In addition, Article 23(11) provides a targeted derogation mechanism allowing Member States, in exceptional circumstances, to seek an adjustment of the deadline in case of a substantial imbalance between the actual demand for injection capacity from capture projects, the progress of necessary transport infrastructure, and the aggregation of

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24 Andrew J Cavanagh, Toby Lockwood, Carbon capture & storage 2030: As the market takes shape, can Europe's CO2 storage projects meet growing demand?, International Journal of Greenhouse Gas Control, available [here](#).

25 Wood Mackenzie (2025), The European Union's carbon storage injection capacity targets face a significant shortfall given challenges to project delivery, available [here](#).

26 Case C-331/88 (1990), The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ECLI:EU:C:1990:391, available [here](#).

27 *Ibid.*, Article 23 Watch (2026).

the mandated individual contributions.

It is important to clarify the definition of compliance as set out by the Commission. Within Article 23, compliance does not mean that CO<sub>2</sub> must already be physically injected at full scale by 2030, which substantially enhances the feasibility of compliance within the prescribed timeframe. Rather, the legislation emphasises that injection capacity should be “available to the market”. In practical terms, this means that the relevant storage permit has been obtained; the legal and commercial arrangements are in place; and the capacity can be offered as a service.<sup>28</sup> Compliance does not necessitate that the storage site be ready to actively inject captured CO<sub>2</sub> by 2030. This substantially enhances the feasibility of compliance within the prescribed timeframe.

In the report commissioned by oil and gas obligated entities, Wood Mackenzie has interpreted compliance as fully operational injection capacity by 2030. This misinterpretation alone could add up to 3.5 years onto their projected timeline per project. Furthermore, the report relies heavily on the timelines of early flagship CCS projects. Many of the projects most often cited in support of long lead times, including projects such as Northern Lights, Porthos and Ravenna, were developed before the current EU policy framework was in place, and in some cases before national CCS rules and policy had fully matured. Their delays were not only technical but were also linked to policy uncertainty, permitting gaps and litigation.

Furthermore, particular emphasis should be placed on the role of onshore CO<sub>2</sub> storage in supporting industrial decarbonisation in highly industrialised regions across the Union, especially in Central and Southern Europe. Onshore projects generally offer shorter development timelines due to simpler characterisation and lower construction complexity. Danube Removals, for example, though they have received their CO<sub>2</sub> storage exploration licence only in June 2024, they are already positioning themselves as possible contributors to the EU’s 2030 CO<sub>2</sub> storage targets as third party developers.<sup>29</sup>

The NZIA seeks to accelerate the development of the European carbon storage market by requiring Member States to support CO<sub>2</sub> transport and storage infrastructure, streamline permitting procedures, improve access to geological data, and recognise carbon storage projects as being of “overriding public interest”. Together with increased financial support through mechanisms such as the Innovation Fund, national subsidy schemes and the forthcoming CO<sub>2</sub> market and infrastructure Regulation, these measures are intended to accelerate the deployment of carbon capture and storage infrastructure across the Union and reduce lead times. Although first-of-a-kind projects have experienced delays, such as the Porthos project in the Netherlands, these challenges are typical of emerging infrastructure sectors and are likely to lessen as regulatory frameworks and technical experiences and know-how develop.

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28 Heisinger, S. (2025), Key Aspects pertaining to the implementation of the 2030 target. Presented at IOGP Europe’s 2nd Workshop on the challenges of implementing the NZIA CO<sub>2</sub> injection capacity objectives, October 14, 2025, Brussels.

29 Danube carbone storage (2024), Project overview, available [here](#).



Figure 3: Storage project timelines. Source: Storage project timeline analysis developed by [Clean Air Task Force](#).

Article 23 Watch’s recent analysis suggests that the picture appears more optimistic than suggested by the Wood Mackenzie report. Based on current projects, the EU could reach around 43 MtCO<sub>2</sub> per year of injection capacity by 2030, with the 50 Mt target potentially still within reach if existing projects are expanded and current plans proceed as expected.<sup>30</sup> This underlines precisely why the Article 23 obligation is needed. The 50 Mtpa objective was designed to give the European CO<sub>2</sub> storage market the decisive push required to move from a slow, uncertain project-by-project rollout towards deployment at the scale and speed needed for industrial decarbonisation. The available evidence does not suggest that the objective is unattainable; rather, it points to a market that is beginning to emerge but still requires clear regulatory direction and investment certainty to reach the level necessary for achieving the Union’s climate goals.

Finally, we would draw attention to the option for Member States to apply for derogations in cases where there are significant obstacles to the creation of carbon storage projects. By the end of 2028, the

Commission must assess whether there is a substantial imbalance between demand for injection capacity and the supply created by the obligation, the progress of the necessary transport infrastructure, and the sum of the individual contributions linked to production activities in that Member State.<sup>31</sup> If such an imbalance exists, the Member State may request a derogation from the deadline for meeting the individual contributions. The framework, therefore, already has a mechanism built in to respond to genuine structural bottlenecks.

Taken together, these points suggest that the 2030 deadline is better understood as ambitious rather than impossible. The applicants would need to show that the target is manifestly inappropriate in light of the objective pursued. Given the way compliance is defined, the flexibility built into the framework, and the discretion generally afforded to the EU in complex technical fields, establishing that the target is manifestly disproportionate may prove difficult.

30 *Ibid.*, Article 23 Watch (2026).

31 Article 13 (11) NZIA.

## Equality and discrimination | Does Article 23 unfairly target EU oil and gas producers?

**Argument put forward by:** OMV Petrom, Shell, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), NAM, Orlen, TotalEnergies

The applicants are also invoking equality and non-discrimination arguments, drawing in particular on Articles 20 and 21 of the Charter and, in some cases, Article 18 TFEU. In broad terms, they argue that Article 23 gives rise to unequal treatment in four situations:

- i. between oil and gas producers who produce in the EU and those who produce outside the EU and import into it;
- ii. between producers operating in Member States with very different conditions for CO<sub>2</sub> storage development;
- iii. between private producers and certain state-linked entities said to be exempt from the obligation; and
- iv. between oil and gas producers and coal producers, which are not subject to the same obligation.

It is settled in EU law that equal treatment requires comparable situations not to be treated differently, and different situations not to be treated in the same way, unless the difference is objectively justified.<sup>32</sup> It is equally settled that comparability must be assessed in light of the object and pur-

pose of the measure concerned.<sup>33</sup>

The purpose of Article 23 is not to regulate fossil-fuel sectors in general. It is to deploy geological CO<sub>2</sub> injection capacity within the Union, so that a functioning EU-wide market for CO<sub>2</sub> storage services can emerge.

That is why some of the comparisons put forward in the litigation are less straightforward than they first appear. First, take the argument based on differences between Member States. Article 23 does not require each company to fulfil its contribution in the Member State where it is registered. Injection capacity may be developed elsewhere in the Union, including through cooperation with other entities, third-party storage projects, or contractual arrangements with storage developers or investors.<sup>34</sup> The obligation is therefore structured around a Union-wide market, not around a Member State-by-Member State allocation of injection capacity deployment activity. National differences in geology, permitting history or political support for CCS may affect the ease of compliance in practice, but they do not, on their own, show that comparable situations are being treated differently in law.

The same is true of the argument based on exemptions for certain state-linked entities. Ownership, by itself, is not the decisive issue. The relevant question is whether the distinction rests on objective criteria built into the framework, such as the threshold and identification rules used to determine

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<sup>32</sup> Case C-180/20 (2021), Case C-180/20, European Commission v Council of the European Union, ECLI:EU:C:2021:495, available [here](#)

<sup>33</sup> See for example: Case C-127/07 (2008), Société Arcelor Atlantique et Lorraine and Others, ECLI:EU:C:2008:728, available [here](#); Case T11/17 (2019), RK v Council of the European Union, ECLI:EU:T:2019:65 available [here](#); Case T-378/20, Ryanair DAC v European Commission, ECLI:EU:T:2021:194, available [here](#).

<sup>34</sup> Article 23 (5) NZIA.

which entities fall within the scope of the obligation.<sup>35</sup> If a company falls outside the scope of the obligation because it does not meet the relevant criteria, this does not in itself indicate that the legislation discriminates on the basis of public or private ownership. In that sense, the issue is better understood as one of legal design and scope, rather than unequal treatment in the ordinary sense.

The comparison between EU producers and non-EU producers is also narrower than it may first seem. Article 23 does not attach the obligation to the placing of hydrocarbons on the EU market. The obligation attaches to a defined category of producers linked to production activity within the Union and, through that, to the geological resources, infrastructure and production history that the EU considers relevant to early storage development. Importers of oil and gas are less relevant for catalysing early-stage carbon storage market development, as they do not generally possess the same direct connection to EU subsurface resources, upstream infrastructure, operational experience and geological data that the Regulation seeks to mobilise in order to accelerate the deployment of CO<sub>2</sub> injection capacity within the Union. The distinction, therefore, reflects the specific objective of building an operational EU CO<sub>2</sub> storage market, rather than a broader attempt to regulate all actors placing fossil fuels on the European market equally.

Finally, regarding the distinction between oil and gas producers and coal producers,

the relevant question is whether these operators are similarly placed for identifying, developing and bringing CO<sub>2</sub> storage sites to market. On that axis, oil and gas producers are manifestly in a different position. Across Europe, the first wave of storage projects has largely been developed by operators with oil and gas expertise, and the most deployment-ready storage opportunities are concentrated in depleted oil and gas fields and saline aquifers.<sup>36</sup> The mere fact that coal seams may, in principle, be used for storage under the CCS framework does not place coal producers in a comparable position. Coal seams remain a more technically contingent and less mature pathway for CO<sub>2</sub> storage, because of injectivity and permeability constraints, whereas depleted oil and gas fields and deep saline aquifers are generally treated as the principal and more mature options for long-term geological CO<sub>2</sub> storage.<sup>37</sup>

The equality challenge has to be read against the wider legislative logic of Article 23. The legislature did not attempt to distribute storage-related obligations across every sector that might conceivably be linked to CO<sub>2</sub> storage. It proceeded step by step, placing an initial obligation on the operators considered best placed to bring forward the first wave of projects, on the basis of the technical and scientific information available at the time.<sup>38</sup> This is particularly appropriate in a field like CCS, where infrastructure, permitting, transport and demand are still emerging unevenly across the Union.

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35 *Ibid.*, Commission Delegated Regulation (2025).

36 IPCC (2005), IPCC Special Report on Carbon Dioxide Capture and Storage, Chapter 5 – underground geological storage, available [here](#); Global CCS Institute (2025), Global Status of CCS 2025, available [here](#).

37 Z. Li et al., The mechanism of pore pressure and adsorption swelling effect on permeability during geological storage of carbon dioxide in coal seams, *Science Direct*, 2025, Volume 391, Part B, available [here](#); A. Bashir et al., Comprehensive review of CO<sub>2</sub> geological storage: Exploring principles, mechanisms, and prospects, *Science Direct*, 2024, Volume 249, available [here](#); IPCC (2005), Carbon dioxide capture and storage, pp 217–219, available [here](#); IPCC (2005), Carbon dioxide capture and storage, pp 217–219, available [here](#).

38 *Ibid.*, Case C-127/07 (2008), [here](#).

On that view, the phased nature of Article 23 is not in itself evidence of discrimination. It reflects a legislative choice to start with the actors most closely connected to the immediate storage bottleneck, rather than to spread obligations at once across sectors not yet equipped to identify suitable formations, secure permits, and develop injection capacity at scale. That progressive logic is also reflected in Article 46 NZIA, which requires the Commission to review the framework and its operation over time. That choice may still be debated politically. But it is not the same thing as unequal treatment without objective justification.

## Issues of EU competence and breach of subsidiarity

### Did the Commission overstep its mandate under the Net-Zero Industry Act?

**Argument put forward by:** OMV Petrom, Black Sea, Romgaz, ExxonMobil, Mobil Erdgas, BEB and Oldenburgisch, Orlen, Tenaz

Some of the applicants further argue that the Commission went beyond the powers conferred on it when adopting the Delegated Regulation and the subsequent Decision. In essence, they contend that the Commission ended up deciding matters that should have been fixed by the co-legislators in the NZIA itself. That argument is difficult to sustain once Article 23 is read closely.

Article 23(1) NZIA already fixes the essential elements of the obligation. It identifies the obligated category, links each entity's contribution to the Union-wide target in Article 20, provides that the contribution is to be allocated pro rata by reference to the entity's share in Union crude-oil and

natural-gas production between 1 January 2020 and 31 December 2023, specifies that a threshold should be established below which entities are exempt from contributing to the target, and makes clear that the contribution should be "made available to the market" by 2030.

The Delegated Regulation does not introduce a new policy criterion. It does not change the target, the reference period, the relevant production criterion, or the category of obligated entities. It simply sets out the technical rules needed to identify the relevant entities and express the allocation rule in a form that can be applied in practice. The subsequent Decision then applies that framework to the data reported by Member States in order to specify each company's individual contribution. Against that background, the Delegated Regulation is better understood as a technical act that gives practical expression to a legislative rule already laid down in the NZIA, rather than as a measure that introduces new elements.

The basic architecture was therefore already fixed by the co-legislators, and the Commission was working within, not beyond, the powers it had been given by the co-legislators who negotiated and passed the Regulation.

### Was Article 23 adopted on the correct legal basis?

**Argument put forward by:** OMV Petrom, Black Sea Oil and Gas, Romgaz

One of the legal questions raised in the litigation is whether Article 23 was adopted on the correct legal basis. The Net-Zero Industry Act was adopted under Article 114 TFEU, the Treaty provision that allows the EU to adopt common rules to improve the

functioning of the internal market.<sup>39</sup> Article 114 TFEU allows the EU to act where a common framework is needed to prevent fragmentation and to support the development of a functioning internal market.<sup>40</sup> The core of the issue here is whether Article 23 is part of a wider EU framework intended to organise, on a common basis, the emergence of a Union market for CO<sub>2</sub> storage services.

That internal-market logic is written into the NZIA. Article 1(1) states that the general objective of the Regulation is to improve the functioning of the internal market. Article 1(2)(b) adds expressly that one of its aims is to establish a Union market for CO<sub>2</sub> storage services. Chapter III then gives effect to that objective by setting a Union-wide target, creating reporting and review obligations, and linking Article 23 to the wider development of a common CO<sub>2</sub> storage market. Taken together, those provisions establish, monitor and review a common framework for the development of a Union-wide CO<sub>2</sub> storage market.<sup>41</sup> In that kind of setting, the argument for a common Union framework becomes stronger, not weaker. The point of Article 114 is to allow the EU to act where a fragmented approach would risk slowing or distorting the development of a shared market.

None of these objects to the climate aims of the NZIA, which clearly links its framework and policies to the Union's climate targets and climate neutrality objectives.<sup>42</sup> Thereby, the measure can serve a broad-

er climate purpose while still being legally grounded in the internal market. On that point, Article 23 is not just about reducing emissions in the abstract; it is about creating the market conditions needed for CO<sub>2</sub> injection capacity to be developed and made available across the Union. In line with the broader objectives of the NZIA, this also relates to strengthening Europe's industrial competitiveness, resilience and strategic autonomy by accelerating the deployment of strategic net-zero infrastructure and reducing dependence on fragmented or external solutions.

## Non-retroactivity and legal certainty | Does Article 23 unlawfully impose retroactive obligations?

**Argument put forward by:** Shell Italia, Black Sea, Romgaz, RockRose, Vermilion, Tenaz (NAM Offshore), Orlen

This argument is based on the fact that the pro rata contribution is calculated using hydrocarbon production levels from 2020 to 2023. The applicants contend that this approach effectively imposes a retroactive burden, penalising them for past production undertaken in full compliance with the law as it stood at the time. In particular, they argue that the Commission relied on an arbitrary historical reference period to determine obligations, without introducing transitional arrangements or adequate safeguards to mitigate its effect when choosing the period of calculation.

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39 *Ibid.*, European Union (2012).

40 Case C-376/98 (2000), *Federal Republic of Germany v European Parliament and Council of the European Union*, ECLI:EU:C:2000:544, para. 27, available [here](#).

41 Joint Research Centre (2024), *Clean Energy Technology Observatory: Carbon Capture, Utilisation and Storage in the European Union – 2024 Status Report on Technology Development, Trends, Value Chains and Markets*, available [here](#); Bellona Europa (2025), *Article 23 Member State Implementation Tracker*, available [here](#).

42 Case C-370/07 (2009), *Commission of the European Communities v Council of the European Union*, EU:C:2009:590, available [here](#); Case C-70/88 (1991), *European Parliament v Council of the European Communities*, EU:C:1991:373, para 12, available [here](#).

Put simply, the litigants say that production carried out between 2020 and 2023 is now being used to create a burden that did not exist at the time.

The principle of non-retroactivity in EU law forms part of the broader principle of legal certainty, which requires that individuals be able to ascertain the law applicable at the time of their conduct. Accordingly, new rules must govern only future situations and must not attach legal consequences to conduct that took place before their adoption.<sup>43</sup> However, it does not prevent the legislature from using a past reference period as the basis for future obligations – or in this case, as an allocation key.

A similar issue arose in *Arcelor Atlantique*, where the Court was asked to consider whether the use of historical emissions data to determine future ETS allocations was retroactive. The Court rejected that argument. It held, in substance, that a measure does not become retroactive simply because it relies on a past reference period to create a new legislative scheme. What is relevant is that it does not alter the legal consequences of conduct that is already complete but instead is used as the basis for organising future.<sup>44</sup>

Article 23 uses past production to allocate a future-facing obligation rather than to sanction past extraction. The contribution to the Union-wide CO<sub>2</sub> injection capacity target to be achieved by 2030, by reference to production between the years 2020 and 2023, does not alter the legal effects of those earlier activities. It serves

only to determine the scale of each entity's future contribution. In that sense, the historical reference period functions as an objective basis for distribution, linked to production activity, resources and capacity, rather than as a penalty for past conduct.

## Lack of impact assessment | Was Article 23 adopted without sufficient evidentiary basis?

**Argument put forward by:** OMV Petrom, Shell Italia, Black Sea, Romgaz, Orlen, TotalEnergies

One of the main procedural arguments raised in the litigation concerns the absence of a formal impact assessment for Article 23. The obligated entities argue that, without such an assessment, the Commission lacked a sufficient evidentiary basis to demonstrate that the obligation constitutes an appropriate response to Europe's shortage of carbon storage, or that it does not impose a disproportionate burden on certain entities. They further contend that this omission limits the Court's ability to properly assess the necessity and suitability of the obligation.

Part of that argument relies on the EU's Better Law-Making framework. The applicants point out that, as a general rule, the Commission is expected to carry out impact assessments for initiatives likely to have significant economic, environmental or social effects.<sup>45</sup> Although impact assess-

43 Article 49 of the Charter of Fundamental Rights of the European Union, available [here](#).

44 This was confirmed by the Court in multiple cases: Case C-63/93 (1996), *Fintan Duff, Liam Finlay, Thomas Julian, James Lyons, Catherine Moloney, Michael McCarthy, Patrick McCarthy, James O'Regan, Patrick O'Donovan v Minister for Agriculture and Food and Attorney General*, para. 26., available [here](#); Case C15/19 (2020), *Azienda Municipale Ambiente SpA v Consorzio Laziale Rifiuti*, ECLI:EU:C:2020:371, paras 57-58, available [here](#); Case C-369/09 P (2011), *ISD Polska sp. z o.o. and Others v European Commission*, ECLI:EU:C:2011:175, par 98., available [here](#).

45 European Union (2016), *Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*, available [here](#).

ments are generally good practice, commitments, such as those made in the Better Law-Making Agreement, are non-binding<sup>46</sup>.

The Commission has been forthcoming in its decision not to conduct a full impact assessment prior to the adoption of Article 23. This decision was justified by the urgent need for legislation in response to the 2022 energy crisis following the Russian invasion of Ukraine, as well as the implementation of the Inflation Reduction Act in the United States, which created an unprecedented amount of tax breaks and subsidies for clean technology in the United States. The EU brought in the NZIA quickly to ensure that they were keeping pace and that the EU could remain competitive and increase self-reliance in areas of key net-zero technologies. The Commission therefore presented the act as part of a broader effort to organise the conditions for industrial decarbonisation and CO<sub>2</sub> storage services at the Union level. In place of a full assessment, the Commission relied on alternative analytical and consultative steps and committed to setting out its evidence base in a staff working document within 3 months of the proposal.<sup>47</sup> It also outlined the legal basis, scope and results of the analysis and stakeholder engagement in the proposal's explanatory memorandum.<sup>48</sup> In that context, the institutions chose to proceed on the basis of other supporting material in a context they regarded as urgent.

## Methodology and data collection issues | Are the thresholds and allocation rules under Article 23 justified?

**Argument put forward by:** Total Energies, Orlen, Shell Italia, Tenaz, NAM, OMV Petrom

A number of the case notices suggest that some obligated entities are challenging the methodology used to translate the Union-wide injection-capacity target into individual contributions. In broad terms, they argue that the methodology was flawed, that the data used were not sufficiently reliable, and that the approach taken in the Delegated Regulation increased the burden on the companies left within scope.

Article 23 already provides that the obligation is to be allocated pro rata by reference to production during the defined reference period. From that starting point, the Delegated Regulation is better understood as applying the allocation principle laid down in the NZIA, rather than replacing it. Some applicants appear to object to the way the denominator was constructed and to the exclusion of smaller European oil and gas producers from contributing to the target. Entities that produced less than 5% of the EU's total oil and gas production between 2020 and 2023 and those that produced less than 610,00 tonnes of oil equivalent are exempt from the obligation.

But once the legal framework itself provides for a threshold below which enti-

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46 Except where specifically required by applicable EU legislation.

47 European Commission (2023), Commission Staff Working Document (SWD) 219 for a Regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (Net Zero Industry Act), p 45, available [here](#); European Commission (2023), Commission Staff Working Document (SWD) 68 - Investment needs assessment and funding availabilities to strengthen EU's Net-Zero technology manufacturing capacity, available [here](#).

48 European Commission (2023), Proposal for a Regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (Net Zero Industry Act), available [here](#).

ties are excluded from the obligation, it is not obvious that excluding those entities from the final allocation exercise amounts to a misapplication of law. The threshold was specifically designed to ensure that smaller producers within the Union are not unfairly burdened with more than what is feasible for their size.<sup>49</sup> This kind of consideration sits within the Union's discretion when making policy decisions.

## Insufficient consultation | Did the Commission breach consultation obligations when implementing Article 23?

**Argument put forward by:** TotalEnergies, Orlen, Black Sea Oil and Gas, Shell Italia, Tenaz (NAM Offshore), NAM

This claim centres on whether the Commission complied with the required consultation procedures when adopting the Article 23 storage obligation. Several entities contend that the Commission failed to adequately consult "interested parties", while some also argue that there was a lack of consultation with Member State experts, as under Article 44(4) of the NZIA. Litigants such as Black Sea Oil and Gas, Romgaz and TotalEnergies also criticise a failure to carry out a transparent, wide-ranging stakeholder consultation as they claim that it breaches both the Interinstitutional Agreement on Better Law-Making and their Right to be Heard under Article 41 of the Charter of Fundamental Rights.

However, stakeholder engagement did happen. The Commission published the secondary legislation online for feedback

between March and April 2025, during which it received multiple submissions and thereby facilitated a degree of public consultation.<sup>50</sup> Once again, given the urgency of advancing industrial decarbonisation, the Commission decided to rely on alternative forms of stakeholder engagement in place of a full public consultation.

The Commission expressly justified the absence of a full consultation by invoking the urgent need to accelerate industrial decarbonisation, maintaining that the Better Law-Making principles are not absolute where such urgency can be demonstrated. Importantly, the contested Decision merely implements technical rules already established in that Delegated Regulation and therefore did not necessitate a renewed consultation process at the final stage. On this basis, the Commission may argue that its approach remained consistent with the underlying objectives of the consultation requirements, notwithstanding its departure from the standard procedural form.

## Misapplication of the polluter pays principle | Are oil and gas producers being made liable for emissions from other sectors?

**Argument put forward by:** OMW Petrom, Black Sea, Romgaz, Orlen

Four obligated entities have invoked the polluter pays principle, claiming that the Article 23 obligation improperly assigns them responsibility for emissions generated by other industries. In EU law, the polluter pays principle requires that the operator carrying out the polluting activity bears the

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49 Recital 5 of the Delegated Regulation.

50 European Union (2025), Carbon storage – oil and gas producers' contributions to the EU's 2030 storage objective, available [here](#).

costs of preventing, controlling, and remedying pollution or environmental damage.<sup>51</sup> The argument misses the nature of Article 23. The provision is not an emissions-liability regime that creates legal responsibility for emissions from hard-to-abate sectors such as cement, steel, lime, and chemicals, but draws on the capability and strategic position of large oil and gas producers. This is highlighted by the individual contributions calculated by reference to CO<sub>2</sub> emissions or environmental damage but rather calculated by reference to oil and gas production. The purpose of Article 23 is to address the storage bottleneck in the development of a Union CO<sub>2</sub> storage market, not to reassign emissions liability. Emitters remain subject to the EU ETS and must still surrender allowances for unabated emissions. They must also pay for CO<sub>2</sub> storage services if they choose to abate through CCS. In that sense, polluters continue to pay for their own pollution.

## Conclusion

These cases concern far more than a single contested provision in the NZIA. They are an early legal test of whether the EU can legislate to create the market conditions and strategic infrastructure needed to accelerate industrial decarbonisation, develop a functioning internal market for CO<sub>2</sub> storage, and ultimately deliver on the climate objectives set out in the European Climate Law.

The applicants have raised a broad range of legal and procedural objections. Yet at the heart of the litigation lies a more fun-

damental question: whether the EU can require a defined group of companies to help overcome the storage bottleneck that continues to slow the deployment of industrial carbon management technologies across Europe.

Article 23 does not make oil and gas producers legally responsible for emissions from other sectors. It does not create a general levy on fossil fuels, nor does it require the companies concerned to independently deliver the entire CCS value chain. Instead, it places an initial obligation on the actors the EU considers best positioned to help bring forward the first wave of CO<sub>2</sub> injection capacity, drawing on their existing subsurface expertise, infrastructure and market position. At the same time, the framework includes flexibility mechanisms, cooperation possibilities, derogations, and review clauses intended to reflect the evolving nature of the European CCS market.

In that sense, Article 23 is not an attempt to fully resolve the challenge of industrial decarbonisation through a single measure. It is a market-creation instrument designed to help move Europe beyond the long-standing deadlock that has prevented CO<sub>2</sub> storage deployment from reaching the scale required for climate neutrality. That is why these cases matter beyond the courtroom. Their outcome will shape not only the future of Article 23, but also the broader question of whether the EU can move from climate ambition to implementation by creating the regulatory and market conditions necessary for strategic clean infrastructure to emerge. If the obligation is weakened, delayed or tied up in prolonged legal uncertainty without an

<sup>51</sup> European Union (2020), The polluter-pays principle and environmental liability, available here.

effective alternative, the consequence will not simply be a legal setback. It risks slowing investment, delaying the development of the wider CCS value chain, and pushing one of the key enablers for industrial decarbonisation further out of reach.



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