

ARTICLE 23 ON TRIAL EXPLAINER

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

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This explainer was published under Article 23 Watch, a joint initiative of Carbon Balance Initiative, Clean Air Task Force, and Bellona Europa that tracks transparency and accountability in the implementation of Article 23 of Net Zero Industry Act, which establishes a first-of-its-kind obligation on EU oil and gas producers to develop CO₂ injection capacity. The views and analysis expressed are those of the named authors. Each publication under Article 23 Watch is reviewed by a representative of each member organisation prior to publication. Learn more at www.article23watch.eu.

The rationale behind Article 23

Article 23 of the Net-Zero Industry Act (NZIA) is the European Union’s first major attempt to create a CO₂ storage market through a binding obligation on the oil and gas sector. Under the regulation, **44 oil and gas producers operating in the EU are required to contribute to making 50 million tonnes of annual CO₂ injection capacity available to the market by 2030. In October of 2025, obligated entities with a collective obligation of more than 65% of the overall target brought legal challenges to the carbon storage obligation.**

The NZIA identifies the availability of operational storage sites as one of the main constraints on CCS deployment in Europe, noting that carbon capture is becoming increasingly economically viable while storage capacity remains underdeveloped.

This concern is particularly significant as **it is now broadly accepted that carbon capture and storage will be needed for sectors such as cement, lime, chemicals and other so-called “hard-to-abate” industries to tackle process emissions that cannot be dealt with through electrification and renewable energy.**^{1,2,3,4} But while capture, transport and storage are all essential parts of the CCS value chain, storage has remained one of the main bottlenecks.⁵ Without sufficient injection capacity, industrial emitters have nowhere to store captured CO₂ regardless of their willingness to invest in capture technologies.

Recent analysis suggests that capture demand in Europe may exceed available storage capacity by as much as 144% by 2030, creating a serious risk of deployment bottlenecks. The EU is already supporting a growing number of CO₂ capture projects through programmes such as the Innovation Fund. As of March 2026, the Commission estimated that captured projects funded under the Innovation Fund would require 25.3 million tonnes of CO₂ per year in injection capacity in storage sites, or 50% of the demand for the EU annual injection capacity target.⁶

Despite this growing demand for CO₂ storage, as well as EU and national funding and de-risking measures, storage capacity is not being developed at the pace necessary to enable deep industrial decarbonisation and meet the Union’s climate goals. **Article 23 of the NZIA was introduced to address this challenge. By requiring the largest players in the EU oil and gas sector to make CO₂ injection capacity available to the market, the measure seeks to accelerate the deployment of storage infrastructure and by extension a functioning European market for the technological abatement of CO₂.**

1 International Energy Agency (2019), Transforming Industry through CCUS, available [here](#).
2 International Energy Agency (2023), Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach, available [here](#).
3 IPCC (2022), Industry. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, available [here](#).
4 European Commission (2025), The role of carbon capture across hard-to-abate industries in the EU: a review of projections for 2030 and 2050, available [here](#).
5 Recital 41 NZIA.
6 European Commission (2026), Report on the progress towards reaching the Union-wide target for CO₂ injection capacity, available [here](#).

More than a courtroom battle

The lawsuits against Article 23 are about more than one contested provision in the NZIA. They are an early legal test of how far the EU can go in using regulation to accelerate the creation of market conditions and infrastructure needed for industrial decarbonisation and, ultimately, to meet its legally binding climate goals.

In October 2025, 15 legal cases were brought against the European Commission by 12 litigating groupings spanning 8 Member States. Together, those litigating entities account for more than 65% of the total injection-capacity obligation. The proceedings therefore concern a decisive share of the obligation. As a result, a large part of the 2030 target is now exposed to legal uncertainty. Because investment decisions in capture, transport and storage are closely linked, prolonged uncertainty over the delivery of that capacity could slow the development of the wider CCS value chain, particularly in the Member States where the litigant obligated entities operate.

“Even if the challenges ultimately fail, that uncertainty can still slow investment, complicate project development and weaken coordination across the wider CCS chain, with the immediate risk of delaying implementation and delivery.”

The cases challenge [Article 23](#) itself, the [Delegated Regulation](#) establishing the methodology for calculating each obligated entity’s contribution, and the [Commission Decision](#) identifying the obligated entities and their individual obligation volumes.

What next if the applicants succeeded?

If Article 23 is rendered inapplicable to particular applicants, these obligated entities would be exempted from the obligation while the law remains formally in force.

If the Delegated Regulation or the Commission Decision were annulled, the Commission would be forced to adopt a new delegated regulation, in which it reallocates the individual obligations. That would not necessarily end the obligation altogether, but it would significantly delay implementation and effectively put the 50Mtpa by 2030 target effectively out of reach.

In both scenarios, the practical consequences are similar: greater uncertainty, weaker investment confidence across the CCS chain, slower project development, and a high probability of missing the 2030 target.

These cases therefore raise a bigger question than the fate of Article 23 alone. They will help determine whether the EU can move from climate ambition to delivery by creating the legal and market framework needed for strategic decarbonisation infrastructure to take shape.

The contradiction behind the litigation

Many of the companies now litigating had long presented themselves as supporters, advocates, and central actors in the development of CCS in Europe. The sector had consistently portrayed itself as a key player in and enabler of Europe’s CO₂ storage ambitions, emphasising its subsurface expertise and existing infrastructure as essential assets for developing the CO₂ storage market. For example, the International Association of Oil and Gas Producers (IOGP), representing many of the obligated entities, publicly supported on multiple occasions the storage obligation as the NZIA was being negotiated and described it as “crucial” to unlocking the CO₂ storage Europe.^{7,8,9}

The development of Article 23 formed part of a broader legislative and political process in which industry stakeholders, including oil and gas producers, were extensively engaged through formal consultations and forums. In 2023, the CCUS Vision Working Group under the Industrial Carbon Management Forum had already discussed supply-side regulatory tools that could place responsibility for developing CO₂ storage on those best equipped to deliver it.¹⁰

Yet once the obligation became concrete and legally binding, several of those same actors shifted from advocating for CCS and their role in deploying CO₂ storage to challenging fundamental elements of the regulation before the Court.

What the applicants are arguing

The applicants rely on a wide range of legal arguments, which can broadly be organised around three main themes.

- **Article 23 creates an unfair or excessive burden.** This includes claims based on proportionality, equal treatment, non-discrimination, breach of the right to commercial freedom, property rights and, in some cases, the polluter-pays principle. For example, the applicants argue that Article 23 places a substantial and disproportionate burden on a defined category of companies, and that the way that burden has been assigned and structured cannot be justified in light of the objective pursued.
- **The 2030 target is not feasible.** Injection-capacity projects take too long to be realistically delivered by 2030, the wider CCS chain is not mature enough, and the target is therefore unworkable in practice.

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

8 IOGP (2020), Europe needs a CO₂ storage ambition for 2050, available [here](#).

9 EU Energy (2024), ICM FORUM – PAU – October 10, 2024, available [here](#).

10 CATF (2023), A Vision for Carbon Capture, Utilisation, and Storage in the EU, available [here](#).

- **The legal design and implementation of the obligation is flawed.** These arguments focus on the legal basis of Article 23, the Commission's use of delegated powers, consultation, impact assessment, and the methodology used to divide the Union-wide target into individual company contributions including reliance on past production data.

Taken together, these arguments point in the same direction: weakening, delaying or avoiding the obligation. **The litigation places a major market-creation measure under pressure at the very moment implementation is meant to be well underway.**

The claims

The three claims discussed below are examples, we do not address every plea in detail in this brief. These claims illustrate some of the claims advanced in the lawsuits and why, at a high level, those arguments are open to challenge.

1

"Article 23 is unfair and disproportionate"

What the applicants say: the obligation places too much responsibility on a limited category of companies without sufficiently justifying why responsibility for delivering the target should fall specifically on them.

The weaknesses of the argument: Article 23 does not place the obligation on these companies arbitrarily. It places an initial obligation on the category of operators the EU considers best positioned to help unlock the CCS bottleneck, given their subsurface expertise, infrastructure and long-standing involvement in storage-relevant assets. This is also a role the sector itself has repeatedly claimed to be ready to play.

2

"The 2030 target cannot realistically be met"

What the applicants say: storage projects take too long, the wider CCS chain is too immature, and meeting the obligation is therefore not technically feasible by 2030.

This overlooks an important point: Article 23 does not require full physical injection by 2030. It requires injection capacity to 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.¹¹ All CO₂ storage projects permitted in Europe to date obtained their permits within five years, with Prinos and Greensand doing so in under four.^{12,13}

¹¹ European Commission (2026), Report from the Commission to the European Parliament and the Council on the progress towards reaching the Union-wide target for CO₂ injection capacity, available [here](#).

¹² European Commission (2025), Commission Opinion on the draft permit to permanently store carbon dioxide in the Nini West area of the Danish continental shelf, available [here](#); Offshore Energy (2025), Denmark grants its first-ever approval for CO₂ storage facility, available [here](#).

¹³ European Commission (2026), Commission opinion on the draft permit to permanently store carbon dioxide in the Prinos field located on the Greek continental shelf, available [here](#); HEREMA (2026), Storage permit issued for Prinos CO₂, available [here](#).

The framework also includes flexibility, including cooperation, third-party arrangements, and derogations where there is a substantial imbalance in the wider chain.

3

"The Commission went beyond its delegated powers"

What the applicants say: the Commission exceeded the powers given to it under the NZIA by using the Delegated Regulation to decide matters that should have been fixed by the co-legislators in the Regulation itself.

A closer look suggests that Article 23 already sets the essential elements of the obligation: who is covered, what the obligation is, how it is allocated, the reference period and the deadline. The Delegated Regulation did not create the obligation or change its essential elements. It merely gave practical effect to the framework already laid down in the NZIA by identifying the obligated entities and specifying their individual contributions.

Article 23 and the Development of a European CO₂ Storage Market

Article 23 should be understood for what it is: a targeted attempt to bring forward the first wave of CO₂ injection capacity needed for a functioning European storage market to emerge. It does not make oil and gas producers legally responsible for other sectors' emissions, nor does it require them to build the entire CCS value chain on their own.

It places an initial obligation on the actors the EU considers best placed to help unlock the storage bottleneck that has long slowed the wider development of CCS in Europe, **while leaving room for flexibilities, review, derogation and further market development over time.**

Article 23 is therefore not a complete answer to how the future CO₂ market should be organised, but a first step towards making such a market materialise at the pace necessary to meet our climate goals.

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