

BRIEFING

Should Norwegian producers be included in Article 23 of the Net-Zero Industry Act? Implications of latest EFTA Court finding on Norway's continental shelf

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Disclaimer

This legal brief is 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 the 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

Executive summary

- **Article 23 of the EU's Net-Zero Industry Act (NZIA) requires domestic oil and gas producers to build 50 million tonnes per year (Mtpa) of CO₂ injection capacity by 2030.** Norway has so far held that its producers are exempt, as oil and gas production takes place on its continental shelf which it considers to be outside the scope of the EFTA Agreement.
- **In February 2026, the EFTA Court advised the Norwegian Supreme Court, in *Saga Subsea* (Case E-6/25), that Norway's continental shelf is subject to EEA law, directly challenging the government's prior position.** The Supreme Court's hearing on this topic has been cancelled, leaving the advisory opinion as the last work on the matter for now.
- **However, the EFTA Court opinion of EEA law remains valid over domestic interpretations according to recent analysis.** In other words, if the Norwegian government declines to follow the EFTA Court's advice, this would not settle the matter: Norway's underlying obligations, and the risk of formal infringement proceedings, would most likely persist.
- **This briefing sets out three implementation options for how Norwegian producers are brought into the obligation,** ranging from a small, easily agreed contribution to a larger one on an extended timeline.
- **Our recommendation is an obligation of 25 Mtpa for Norwegian producers if the 2030 target is maintained, tied to storage licences already granted and deliverable within that timeframe.** If a later timeline is implemented for Norwegian producers, the obligation could rise to 40 Mtpa or higher, with Norwegian producers given a compliance period equivalent to that of their EU counterparts.
- **Extending the obligation to Norwegian producers and CO₂ injection capacity would bring Norway into the EU's push to scale up carbon storage** rather than leaving it on the sidelines. Norwegian storage would gain a direct stake in a fast-growing European market, while EU obligated entities would gain more options to meet their targets through North Sea storage.

Introduction

Article 23 of the Net-Zero Industry Act (NZIA) requires 44 of the EU's largest domestic oil and gas producers to contribute towards a goal of 50 million tonnes per year (Mtpa) of CO₂ injection capacity available to the market by 2030.¹ The secondary legislation names the specific entities subject to the obligation and calculates their pro-rata contribution based on their oil and gas production levels between 2020 and 2023.² While the legislation states that it applies across the European Economic Area (EEA), the current target is not calculated to include Norwegian production. Norway has rejected any suggestion that its producers should be brought within the scope of the Regulation, stating that it does not consider the continental shelf, where the production takes place, to be within the scope of EEA law.³

However, in February of this year, an advisory opinion by the Court of European Free Trade Association (EFTA) informed the Norwegian courts that EEA law does in fact extend to the country's continental shelf.⁴ Although the Supreme Court hearing on this topic, scheduled for late 2026, was subsequently cancelled, the opinion given by the EFTA Court remains valid and for now, the final opinion on the topic. That Norway's continental shelf is within the remit of EEA law, and therefore subject to the NZIA, is the current legal standard.

This briefing makes two connected arguments. First, Norway is very likely legally obliged to bring its producers within Article 23. The NZIA is a Regulation of EEA relevance, and the EFTA Court's finding that EEA law extends to the continental shelf stands regardless of whether the Norwegian Supreme Court is able to rule on the matter domestically. Second, on that basis, the live question is not whether Norway participates but how participation is designed. This is not simply a legal or procedural exercise as it will shape the speed of CCS deployment, the geographic distribution of investment, the competitiveness of industrial decarbonisation, and the long-term development of the European carbon storage market. Moreover, if Norway instead fails to act on the legal relevance of the NZIA, it risks falling behind the EU in the development of CCS infrastructure, technology and market mechanisms, potentially weakening its current position as Europe's leading carbon storage provider.

This briefing first sets out the legal basis for Norway's obligation under Article 23, before giving an overview of the policy design options and considerations for bringing Norway into the EU's flagship mechanism for building injection capacity.

Background: Norway's current CCS model

Norway has long been recognised as a European and global leader in the CCS industry. The Sleipner offshore project, commissioned in 1996, became the world's first commercial project designed to capture and permanently store CO₂ in a geological formation under the seabed for the purpose of reducing greenhouse gas emissions.⁵ Snøhvit followed in 2008, proving the technological feasibility of CCS scale-up.⁶ Norway's expertise in this area is closely linked to decades of offshore oil and gas production. As one of Europe's largest suppliers of hydrocarbons, Norway has developed capabilities in subsurface characterisation, offshore engineering, and the management of complex geological formations. This expertise is highly transferable to CCS, since storing CO₂ underground draws on much of the same technical knowledge, infrastructure, and expertise as extracting oil and gas.⁷

Norway also offers one of the largest storage resources in Europe, with an estimated theoretical capacity of up to 80 GtCO₂ of storage in total,⁸ 70 GtCO₂ of which is in the North Sea.⁹ Combined with a comparatively developed CCS regulatory regime and established technical expertise and infrastructure, this provides Norway with a strong foundation for a thriving storage market. As Europe faces significant shortfalls in the supply for storage relative to demand from hard-to-abate sectors in the coming years, Norwegian storage could prove vital to achieving the necessary emission reductions.¹⁰

Norway's geology places it at one end of the carbon storage spectrum, with relatively low capturable domestic industrial emissions but substantial storage capacity. This stands in contrast to Member States such as France¹¹ and Greece,¹² which have higher industrial emissions but more limited geological storage potential, as well as countries such as Austriaⁱ where operational or planned storage sites are limited due to historical national bans. Norway has relatively limited capturable domestic emissions but abundant storage resources that make its continental shelf a strategically valuable resource for European industries seeking access to CO₂ injection capacity.¹³

ⁱ Austria has recently proposed legislation lifting the ban and putting a cap at 7 Mtpa from 2030 to 2034, which currently sits at draft consultation stage [available here](#)



Norway's legal obligation under EEA law

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Norway's early position on the Article 23 obligation

When the European Commission first proposed the NZIA in March 2023, the Norwegian government raised several concerns, including that Article 23 “may be understood as imposing a financial obligation with retroactive effect” and voicing a strong preference for the development of a European CCS value chain with market mechanisms and incentives rather than a regulatory mandate.¹⁴

Despite this, the NZIA is a regulation of EEA-relevance, with Recital 41 stating that “*When this Regulation is incorporated into the European Economic Area Agreement, the Union target of 50 million tonnes of annual operational CO₂ injection capacity by 2030 will be adjusted accordingly*” (emphasis added). As it stands, the current target of 50 Mtpa of injection capacity has not been calculated to include any contribution from producers based outside the territory of the Union, therefore excluding EEA-based production from that number.

However, the Norwegian government has indicated that it is unwilling to subject its hydrocarbon producers to the Article 23 obligation.¹⁵ Offshore Norge, the trade association for oil and gas producers, has similarly argued that while Norwegian storage capacity should be available for EU obligated entities to use towards their contributions, this should not require an increase to the overall target, nor should Norwegian producers themselves be subject to mandatory contributions under Article 23.¹⁶

This position rests primarily on an assertion that obligations must align with EFTA rather than EU injection capacity demand; however this argument struggles when it is considered that Norwegian storage projects such as Northern Lights were always intended to provide storage capacity to emitters beyond the country they operate from, and that obligated storage can, in any case, be sold to obligated entities elsewhere who may struggle to meet their obligation within their Member State. Offshore Norge has also raised a retroactivity challenge, an argument already addressed elsewhere,¹⁷ which can be summarised as resting on a mischaracterisation of Article 23: past activity was used to calculate suitable figures for a future regulation rather than as the basis for a retroactive punishment for past production, as Article 23 is not intended to function as a sanction on entities. Finally, Offshore Norge argues that Article 23 reflects a deviation from the polluter pays principle. Yet, the regulation is not punishment for emissions or climate impact, but rather created to capitalise on existing infrastructure, expertise, and market share to catalyse a functioning CCS market in Europe.

While the European Commission has maintained that the NZIA is of EEA relevance, Norway's participation had remained under discussion between the EU, the Norwegian Government and the EEA Joint Committee, including the possibility of voluntary participation – until a recent EFTA Court ruling brought, with high likelihood, Norwegian producers and storage capacity within the scope of Article 23.

EFTA Court ruling and impacts on NZIA

In February 2026, the EFTA Court issued an advisory ruling in *Saga Subsea* (Case E-6/25), confirming that the EEA law applies to Norway's continental shelf and all activities that occur there. This has been said to be "the most important ruling in the history of the EFTA Court."¹⁸ Until now, Norway has maintained that its continental shelf, where all of its petroleum extraction occurs, is outside the remit of the EEA. The EEA extends the EU's single market to three non-EU states, namely Norway, Iceland and Liechtenstein. This means that any legislation or regulation of relevance to the single market is generally incorporated into the EEA Agreement and, once incorporated, applies to all parties.

It was then expected that the Supreme Court would have to respond to and consider how to implement this judgment into Norwegian national law; however, that hearing has since been cancelled. Recent legal analysis of the status of the Norwegian Supreme Court rulings under EEA law concludes that Norwegian court decisions have no independent significance in interpreting EEA law; the opinion of the EFTA Court must prevail as it remains a highly authoritative legal guidepost on how the rules of the single market must be applied.¹⁹ A domestic judgment guides domestic implementation, but does not remove Norway's underlying obligations.

Although the Norwegian government had submitted a differing interpretation of EEA jurisdiction, namely that the continental shelf is not subject to the laws of the rest of single market, the country still risks formal infringement proceedings being brought against them if they decline to implement the judgment.²⁰ It is highly unusual for Norway to

reject an advisory opinion of the EFTA Court, and failure to follow it could put a strain on the country's relationship with Brussels and the homogeneity of the single market.²¹ In practice, this means that all matters of EEA law now apply to the continental shelf, including Article 23 of the NZIA.

What happens next

Following this judgment, the EFTA Surveillance Authority (ESA), the body charged with monitoring Norway's compliance with the EEA Agreement, will be expected to actively scrutinise Norway's offshore practices, including the implementation of regulations such as NZIA, the EU Methane Regulation and the CCS Directive as they apply to activities on the continental shelf. Norway and the EEA Joint Committee will have to establish how these frameworks now apply to offshore wind, petroleum operations and carbon storage.

EEA law does not get transposed directly into Norwegian law but rather the government retains significant scope in writing single market requirements into domestic law. The government can, for example, "freeze" the implementation of EEA law to give the country's parliament time to debate, draft and vote on the specifics of its transposition. This is designed to allow for careful analysis of how large legislative packages, such as the NZIA, will impact domestic sectors such as energy production, before officially enacting them.²² This practice could potentially lead to major delays in implementing these regulations.

A number of decisions will still need to be made around the size, design, and timeline of the regulation as it applies to EEA producers.

Why the policy design matters

Getting the design of Norway's participation right is particularly important given Article 23's broader objective of accelerating the development of CO₂ injection capacity within Europe. If the EFTA Court's ruling is implemented, Norwegian participation can complement the development of CO₂ storage capacity elsewhere in the EU as well as provide more geographical options for obligated entities to comply with their pro-rata share of the Regulation, as many obligated entities have investments in carbon storage projects in Norway that could be counted towards their mandatory contributions.²³ Additionally, Norway's choices in implementing Article 23 could have implications beyond its own borders. The approach ultimately adopted may also provide a template for similar policy instruments and forms of cooperation between the EU and other third-party countries. This could be relevant for use of carbon storage in countries such as the UK, whose North Sea carbon storage capacity will be important to EU industrial decarbonisation targets²⁴ and who has a memorandum of understanding (MoU) with the EU to link their ETS schemes²⁵ or Egypt which signed an MoU with the Greek government last year.²⁶

The following sections set out key considerations around policy design, including three potential models.

Benefits and risks of including Norwegian producers under Article 23

Any design choice for Norwegian inclusion should be judged against the benefits it could generate and the risks the EU needs to manage. These criteria also frame the assessment of the three models that follow in the next section.

Benefits of Norway's inclusion

1. Additional storage capacity for European emitters. Norwegian inclusion could provide EU-based hard-to-abate sectors with access to some of the world's most developed offshore CO₂ storage projects. Recent analysis indicates that demand for carbon storage in the EU could significantly exceed available supply, with European demand potentially outpacing available storage capacity by up to 166% by 2030.²⁷ That demand should attract real investment as more than 100 carbon capture projects, representing over 80 Mtpa, are currently seeking Innovation Fund support. At the same time, the current storage pipeline falls short of the 50 Mtpa target, with estimates in operational EU storage capacity reaching as high as a 20 Mtpa shortfall in 2030.²⁸ In the near term, storage capacity is needed to support industrial decarbonisation, while in the long term it is expected to enable carbon dioxide removals such as direct air capture with CCS (DACCS) and bioenergy with CCS (BECCS), both of which were recently proposed for inclusion in the EU ETS.²⁹

2. A stronger commercial case for Norwegian storage development.

Article 23 requires obligated entities to create or invest in CO₂ injection capacity and to show it has been made available to the market by producing a storage service agreement with an industrial emitter to purchase that capacity.³⁰ This creates a direct link between storage development and market demand. For Norway, where domestic demand for carbon storage is expected to remain comparatively low, a direct tie with the European market could help to move CCS projects beyond one-off, first-of-their-kind developments and unlock further investment in Norway.

3. More flexibility for EU obligated entities. The inclusion of the Norwegian continental shelf into scope widens the range of compliance options for EU obligated entities, letting them invest in established Norwegian projects, new storage development or letting them use any previous investment in projects in Norway towards their contribution.

Risks of Norway's inclusion

1. Over-concentration of storage in the North Sea. As of 2024, 89% of carbon storage projects set to be operational in Europe by 2030 are in the North Sea, including all major CCS projects that have reached final investment decision.³¹ Including Norwegian producers in Article 23 could reinforce this concentration. While this may accelerate storage development in the short term, the proven capacity of North Sea fields and the option to meet obligations through third-party agreements may draw new capacity to the region, at the expense of more balanced development across Europe. Hard-to-abate emitters in the rest of Europe, could be left with limited storage access and higher CO₂ transport costs if they had to transport their

carbon to the North Sea either by pipeline, ship or rail. Obligations for Norwegian producers should therefore ensure that additional North Sea capacity complements, rather than competes with, wider European storage development, by carefully sizing the contribution and ensuring enough funded capture projects demand storage elsewhere in Europe.

2. Implementation timelines and regulatory alignment. Setting the contribution, timeline and enforcement mechanisms for Norwegian producers will be complex. Norwegian entities need sufficient time to establish projects and contractual arrangements, while remaining consistent with the expectations placed on their EU counterparts. A tailored timeline could reflect the practical realities of developing new storage capacity and the time Norway needs to establish the necessary governmental and regulatory framework, including streamlined permitting, a one-stop shop for relevant information, and a penalty mechanism for obligated entities that fail to comply.³²



Implementation options: Three models

The table below summarises three potential policy models. We have excluded a purely production-based pro-rata model for Norwegian producers, as they accounted for 78% of EEA oil and gas production over the NZIA compliance period (2020–2023), 3.5 times EU production.³³ A pure pro-rata approach would imply an obligation of over 100 Mtpa. EU producers may argue for this on comparability grounds, but an obligation of that size would raise feasibility, monopolistic and stranded asset concerns.

Furthermore, the 50 Mtpa EU target was not derived from individual production levels. It was set according to the bloc's overall injection capacity needs, with technological and economic feasibility considered, and then divided pro-rata among producers for a 2030 target. Any Norwegian contribution should likewise be built around the single market's carbon storage needs, enabling faster and feasible implementation while avoiding a North Sea storage monopoly. It would also carry a stranded asset risk that we do not see with existing NZIA carbon storage targets.

Table. Overview of implementation models for Norwegian inclusion

Option	Mtpa	Basis	Timeline	Effect on EU capacity	Advantage	Trade-off	Total EEA Storage capacity
Limited contribution	5	Linked to Norway's point-source industrial emissions (~5 Mtpa)	By 2030	Lower total storage volume; storage concentrated in the Norwegian North Sea; Additional licenced capacity in Norway of approximately 25 Mtpa available to all EU obligated entities after 5 Mtpa	Simple to negotiate; prior industry support; fastest to enact; leaves room for post-2030 expansion; keeps the obligation on the same timeline	Smallest additional volume to overall EU storage injection capacity; unequal obligation with EU counterparts	55 Mtpa
Existing storage licences	25	Tied to existing permits deliverable by 2030	By 2030	Grows EU storage market from ~ 50 Mtpa closer to 80 Mtpa; sets upper limit to preserve incentives for storage elsewhere in Europe	Best balance of meaningful contribution and feasibility	Falls short of true pro-rata equivalence with EU producers' obligations	75 Mtpa
Greater contribution later timeline	40	An extended timeline to match the 6.5-year compliance period EU producers got under the NZIA	6.5 years from domestic implementation into Norwegian law	Will eventually deliver a larger contribution	Gives Norwegian producers time proportionate to their EU counterparts	Delays market benefits; creates asymmetry with EU producers	90 Mtpa

Option 1: Limited contribution

This option links the obligation to the point-source industrial emissions that Norway must capture and store by 2030, which is around 5 Mtpa.ⁱⁱ It does not consider Norwegian hydrocarbon production, storage availability or ongoing projects on the continental shelf. As a smaller obligation and a proposal with previous industry support, it could greatly simplify negotiations, making this the easiest option to enact before the 2030 deadline, as well as creating potential conditions for expanding the obligation after 2030.³⁴

However, under this option, Norwegian producers bear only 10% of the target. The obligation would fall disproportionately on EU producers, given their respective production volumes.

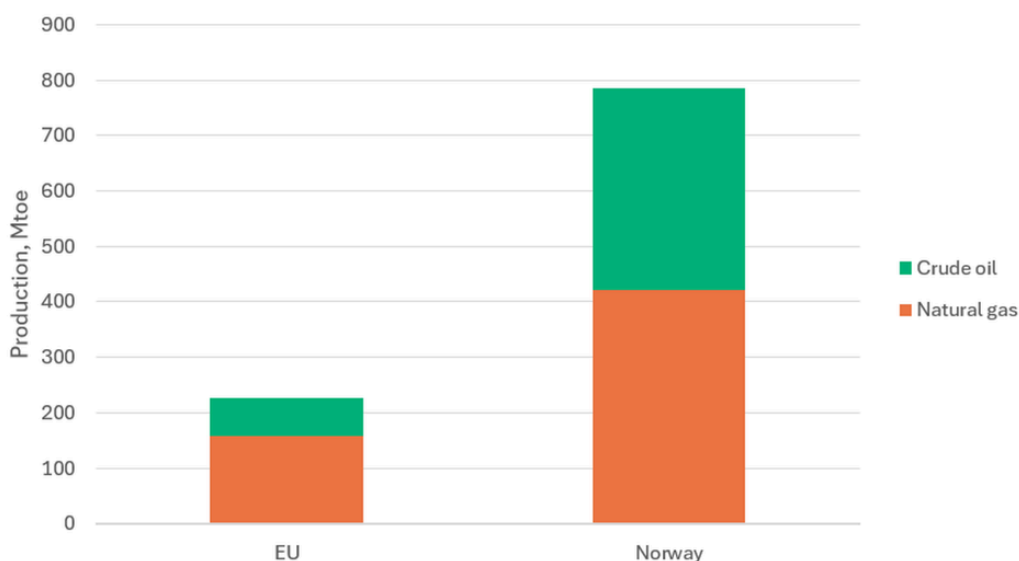
ⁱⁱ Based on a range of 4–6 Mtpa of carbon storage necessary for Norwegian climate neutrality goals by 2030 [available here](#).

Option 2: Existing storage licences

The second option creates an obligation of 25 Mtpa of additional carbon injection capacity from Norwegian producers by linking the obligation to operational capacity and existing licences which can expect to be permitted by 2030. Current licences could ultimately deliver as much as 50–70 Mtpa,ⁱⁱⁱ but are unlikely to all be successfully developed, or ramp up to full capacity in the near term. Based on announced project development timelines, around 30 Mtpa is targeted by 2030.

For this option we propose a target of 25 Mtpa for Norwegian producers, to allow for some flexibility within the obligation. The graph below signals that a realistic amount of carbon injection capacity to expect by 2030 is 31.5 Mtpa (rising to 41.2 Mtpa by 2032). It may be preferable to avoid the tight margin of mandating the near exact capacity of existing licences by 2030. This approach puts weight on bringing Norwegian producers within Article 23 as close as possible to NZIA's 2030 target. It is also deliberately cautious as it sits below the 31.5 Mtpa licensing estimate, which itself is likely

ⁱⁱⁱ Including published estimates for Smeaheia and Trudvang (both 20 Mtpa)



EEA crude oil and natural gas production during the NZIA compliance period (2020–2023)

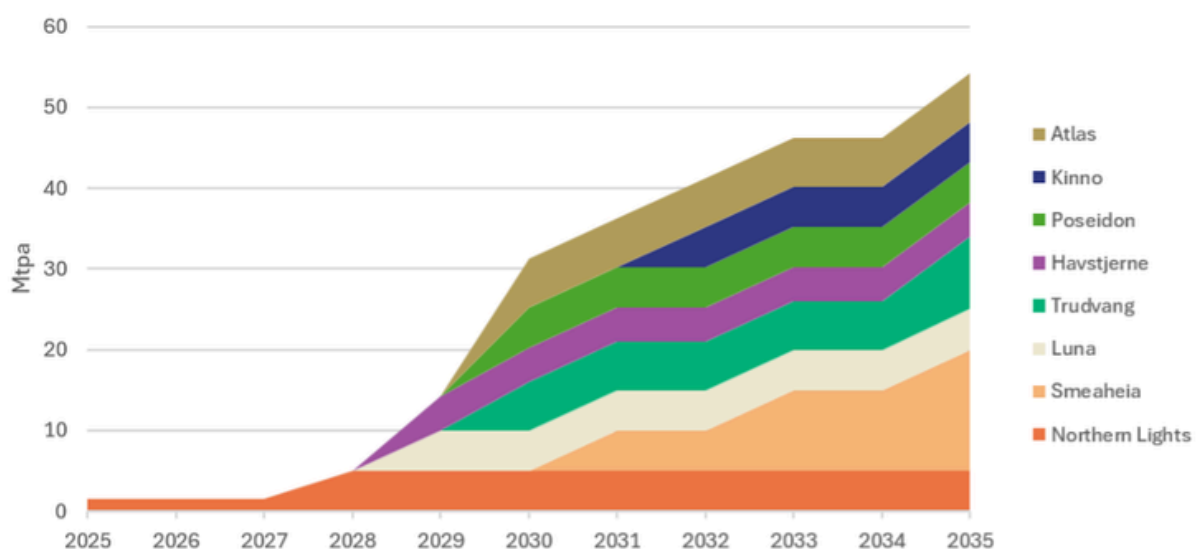
conservative, for example excluding Smeaheia,^{iv} which is expected to have begun injection by 2031.

The option balances three objectives: adding meaningful storage to the European market, keeping the obligation proportionate to Norway's existing project pipeline, and avoiding excessive concentration of storage in the North Sea. It is realistic, because the capacity is already licensed. It is also considers fairness, because it places a more proportionate burden on high-output producers outside the Union while adding significant capacity to both Norwegian and EU markets. Bringing total injection capacity in the single market closer to 80 Mtpa would also increase competition among storage providers and lower prices for industrial emitters in Europe's nascent CCS market.

^{iv} Smeaheia is expected to store 20 Mtpa, with commercial operations beginning around 2030, with long-term structural capability to securely contain in excess of 100 million tonnes of carbon dioxide altogether – www.equinor.com/energy/smeaheia

This approach advocates for keeping an obligation on Norwegian producers in line with announced project timelines, noting that this approach gives producers a shorter timeline on which to comply with their obligation. However, this timeline is based around projects that already exist and are therefore not required to go faster than EU projects, which negates the concern of being disadvantaged by a shorter timeline.

However, the Norwegian government can delay implementation pending domestic parliamentary approval. If it does, the obligation may not take effect in time for EU obligated entities to count Norwegian injection capacity towards their 2030 targets. In that case, the storage would serve only Norwegian producers' own obligations that instead would still add valuable injection capacity to the market for European industrial emitters.

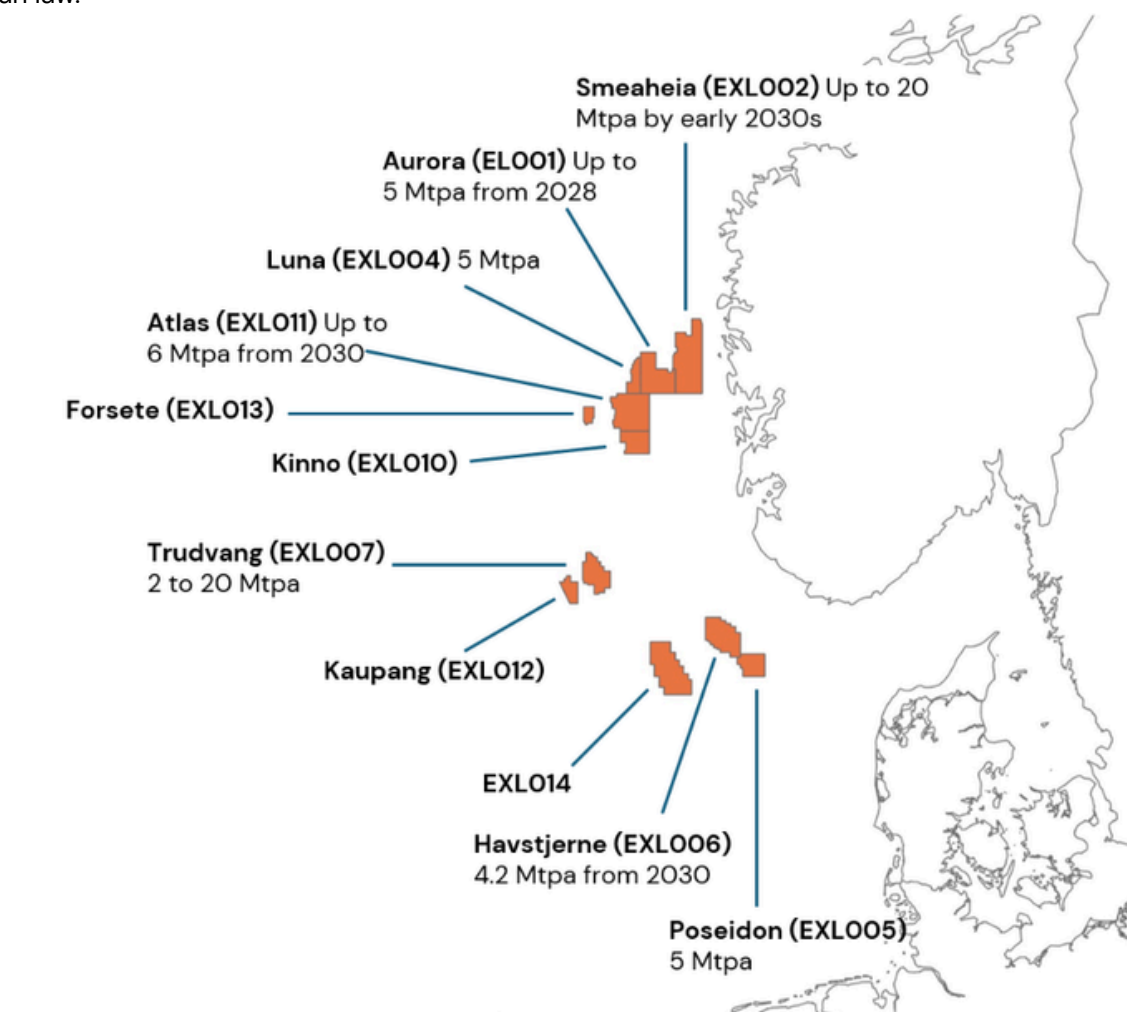


Projected growth in Norwegian CO₂ storage capacity over time, based on announced timelines for current storage licences

Option 3: Greater contribution, later timeline

The third option includes a provision that the Norwegian authorities negotiate a later timeline for Norwegian producers to comply with Article 23. Under this option, Norwegian producers would be obligated to develop *at least* 40 Mtpa of storage which could be delivered by ramping up capacity at existing licences, potentially supplemented by new storage areas while aiming to prevent a North Sea storage monopoly. This option would have an extended timeline matching the minimum six-and-a-half-year compliance period that EU producers received under NZIA's implementation that would run from domestic implementation into Norwegian law.

The size of the contribution could depend on the implementation timeline. While the timeline should reflect the size of the obligation, it should also reflect Norway's existing advantages in this area and align with the progress and needs of the single market. A later compliance deadline would eventually deliver a larger contribution and give Norwegian producers time proportionate to their EU counterparts. However, this could delay the market benefits and create an asymmetry with EU producers, which may not be acceptable to the EU and to other obligated entities.



A geographical representation of Norway's active CO₂ storage licences and permits, with target capacities where available.

Summary

The EFTA Court's advisory opinion in *Saga Subsea* (Case E-6/25) marks a potential turning point for the European CCS market. As set out in Part 1, Norwegian courts' treatment of EEA does not, on its own, determine the country's obligations at the international level. Absent a contrary and internationally recognised basis for narrowing the EFTA Court's understanding, Norway's continental shelf should be treated as falling within the scope of EEA law, and therefore of Article 23 of NZIA.

The question then shifts from *whether* Norwegian producers are integrated into Article 23 to *how*. Design choices carry real consequences, shaping not only the pace at which additional storage capacity reaches the market, but also whether Europe's CCS build-out remains geographically balanced or becomes increasingly concentrated in the North Sea. It also carries important implications for perceived fairness among European oil and gas producers: if Norway accounts for around 80% of the single market's oil and gas supply, it makes little sense for EU producers to be the only ones bound by an injection capacity obligation.

Furthermore, the precedent set here on the scope of obligation, the treatment of existing infrastructure and projects, the timeline for implementation, and the division of obligation among producers, is likely to inform how the EU cooperates with other third-party countries, from the UK to Egypt, on cross-border carbon storage. With the 2030 Article 23 deadline fast approaching, policymakers on both sides of the EEA relationship have a narrowing window to get this design right. Getting it right means treating Norwegian storage as a complement that strengthens the ambition of a functioning, continent-wide CCS market providing commercial and decarbonisation advantages for both the EU and Norway.



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