

## **Zero Emissions Platform's response to the public consultation on oil and gas producers' contributions to the EU's 2030 storage objective set out in the Net-Zero Industry Act**

The Zero Emission Platform (ZEP) welcomes the opportunity to provide feedback on the draft Delegated Act outlining the contributions of oil and gas producers to the EU's 2030 storage objective as set out in Regulation (EU) 2024/1735 (the "Net-Zero Industry Act", thereafter NZIA).

Achieving the target of 50 million tonnes of annual CO<sub>2</sub> injection capacity in the EU by 2030 is key to help Europe meet its climate objectives. ZEP supports a strong and robust regulatory framework which ensures that individual contributions to this target are identified, calculated, and distributed in a fair and just way among obligated entities, in accordance with the NZIA.

ZEP commends the European Commission for its work on the NZIA and remains committed to assisting European policymakers as much as possible on all topics related to industrial carbon management.

This document includes the analysis and suggestions put together by ZEP's members and experts with regards to the draft Delegated Act 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.

### **1. Identification of obligated and exempted entities**

We support the European Commission's efforts to ensure fairness in the calculation and distribution of the individual injection capacity contribution of obligated entities.

We also support the approach outlined in Recital 5, which states that particular attention should be paid to SMEs (i.e. companies with less than €50 million revenue). As outlined in Recital 4, obligated entities should be large companies or members of large groups that have the "financial and technical means to invest in the deployment of CO<sub>2</sub> geological storage sites". Most SMEs should thus be exempt from an obligation. This will also reduce administrative burdens for the Member States.

To ensure that the redistribution of "exempted capacity" remains fair for obligated entities, the European Commission must however make sure that exempted entities, collectively, only represent a small percentage of the oil and gas production in the EU between 2020-2023. Any exempted capacity shall also be reallocated to obligated entities on a pro-rata basis that does not deviate significantly from their original contributions based on their respective production shares.

ZEP welcomes the additional rules for the identification of obligated entities (Article 2), which apply where (1) an authorisation is held jointly by more than one entity, (2) an authorisation has been transferred between obligated entities during the relevant production period, and where (3) an authorisation holder has ceased to exist on 30 June 2024. These rules contribute to holding entities accountable and ensuring that the EU meets its annual CO<sub>2</sub> injection capacity target on time.

However, paragraph (3) needs further clarification. The first sentence is confusing and should be amended as follows: “*Where an authorisation holder has ceased to legally exist **any time from 1 January 2020 to 29 June 2024 (included)** [...]*”. This would be more consistent with Recital 10 of this draft Delegated Act and the intentions laid out in the NZIA. ZEP recommends that the European Commission also specifies who the contribution obligation would fall on to in case authorisation holders cease(d) to exist *after* 30 June 2024, and in the case subsequent holders also cease to exist. Furthermore, paragraph (3) does not explain what “ceasing to legally exist” means: a company could have ceased to operate in a Member State but continue to exist, could have change its legal name, or merged with another entity under a new name.

This is also why ZEP supports the idea of injection/storage “certificates”. This will help reduce the risk of double counting and improve transparency in case obligated entities sign agreements with third parties.

## 2. Calculation methodology of the individual pro-rata contribution of obligated entities

ZEP supports the calculation methodology proposed by the European Commission in Article 4 of this draft Delegated Act. The simple formula is easy to understand and is coherent with the text of the NZIA.

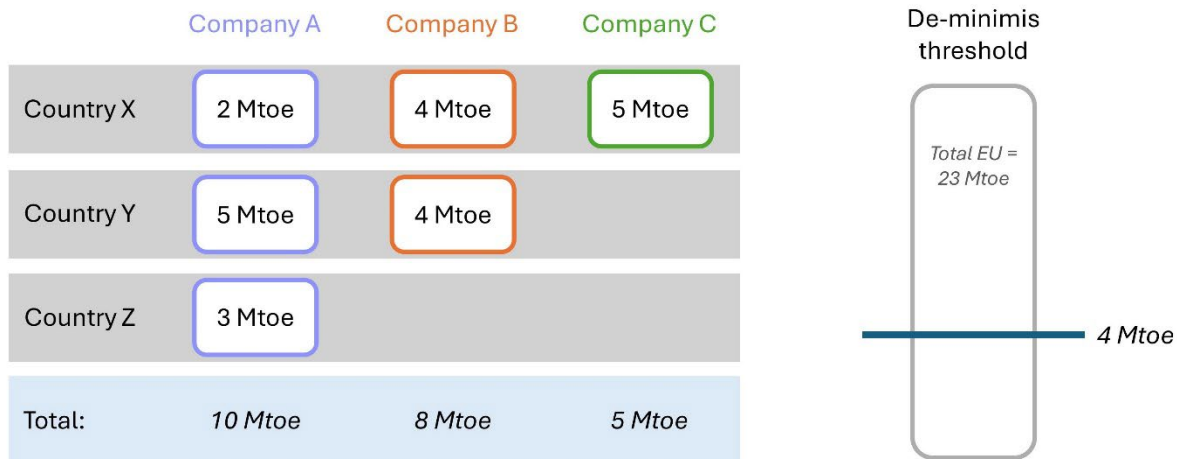
When determining the exact value of the “de-minimis threshold”, we recommend that the European Commission pays particular attention to the total oil and gas production volumes of all authorisation holders notified by the Member States in accordance with Article 23(2) of the NZIA.

We understand that the European Commission cannot disclose the full oil and gas production data they received from the Member States, as this information is too commercially sensitive. This also explains why this matter was only discussed within the Commission Expert Group on CCS, which is only composed of the European Commission and Member States representatives.

However, we recommend that the European Commission shares the definitions that were used during the data collection process as well as the conversion factors they applied to convert gas data in ktoe. This will ensure that all the oil and gas production data was correctly and consistently reported before identifying obligated entities and calculating their individual contributions.

### 3. “Fairness” in the distribution of contributions

We wish to highlight the hypothetical scenario below to reflect the importance of “fairness” in the distribution of individual contributions.



(Note: The values used in the scenario above do not represent real production values, they are only used for illustrative purposes.)

Since “authorisation holders” refer to legal entities notified by Member States (cf. Article 1(1) in this draft Delegated Act), oil and gas companies’ contributions will be assessed on the basis of production levels *at national level*. This means that the de-minimis threshold could inadvertently target smaller companies with a large but localised production, instead of larger companies with a large production *at EU level* but distributed across multiple sites/subsidiaries. In the example above, Company C’s unique installation would fall above the indicated threshold, while half of Company A’s production would fall below. We trust the European Commission will find a value for the de-minimis threshold that takes into account these considerations, and exempt SMEs where appropriate (as implicitly mentioned in Recital 4 of this draft Delegated Act).

In addition, as mentioned in the first chapter of this document, the European Commission must ensure that the obligation to develop 50 Mtpa of CO<sub>2</sub> injection capacity in the EU by 2030 applies to entities responsible for most of the oil and gas production in the EU between 2020-2023, and that the threshold is set low enough to distribute individual obligations fairly among all oil and gas producers. To this end, the European Commission should reveal how much of the total EU oil and gas production falls above the de-minimis threshold (i.e. which percentage of the total production it covers). Accountability must remain the guiding principle, and it is therefore both reasonable and necessary to require the majority of European oil and gas entities to contribute to the deployment of CO<sub>2</sub> storage across Europe to enable deep emission reductions for industries that cannot otherwise fully decarbonise.

#### 4. Annual progress reporting by obligated entities

ZEP welcomes the provisions listed in Article 5 of the draft Delegated Act describing the information obligated entities shall submit to the European Commission in their annual reports. As these reports will be publicly available (as stated in Article 23(6) of the NZIA), all stakeholders will be able to monitor progress towards the Union-wide CO<sub>2</sub> injection capacity target – including policymakers, project developers, researchers, and civil society organisations. Ensuring transparency and striving for accuracy will enhance public awareness and scrutiny. These annual reports will be just as valuable to the obligated entities themselves, as they will be able to compare experiences and learn from each other. This will be key to reduce the costs of developing CCS projects and to accelerate the deployment of CO<sub>2</sub> infrastructure in line with Europe's climate objectives.

However, we believe there are several points in Article 5 that could benefit from further clarification, and that others could be removed:

- Subparagraph (d) requests that obligated entities report on their “annual injection capacity”, however further clarity may be needed here to better define these terms. It is common for CO<sub>2</sub> storage operators to inject higher volumes of CO<sub>2</sub> during the first years of operations for risk management purposes and to adjust subsequent injection based on a number of factors, including reservoir pressure as well as any potential “upstream” operational issues during the CO<sub>2</sub> capture and transport phases. Variations in annual injection capacity are to be expected, especially in early years of operation. The European Commission should provide additional guidance to determine how to interpret these terms (both in the scope of these annual reports as well as in the calculation methodology described in Article 4(2) of this draft Delegated Act, and Articles 20 and 23 of the NZIA). Using the “nameplate capacity” (the intended maximum technical capacity) indicated in the permit of storage operators would be an alternative option that would reflect well the total CO<sub>2</sub> injection capacity at EU level – although the European Commission may wish to impose a maximum deviation standard so that the “operating capacity” (i.e. how much CO<sub>2</sub> is actually being injected each year) does not go lower by more than 10% of the nameplate capacity. ZEP recommends that the annual reports submitted obligated entities include data both on nameplate capacity and operating capacity.
- Subparagraphs (f) requests obligated entities to report on the development of CO<sub>2</sub> infrastructure, but this falls outside the scope of their CO<sub>2</sub> injection capacity obligation set out in the NZIA, therefore this provision could be excluded. We understand this information could be useful for broader infrastructure planning at European level, so another alternative would be to *suggest* that entities report on transport infrastructure when it forms an integral part of their CO<sub>2</sub> storage project (e.g. Northern Lights CCS project) – i.e. as a suggestion, and only where applicable. Moreover, ZEP also notes that subparagraph (f) requires entities to report on the “applicable CO<sub>2</sub> quality requirements”. Since each CO<sub>2</sub>

transportation infrastructure project may decide to adopt different requirements, ZEP strongly recommends that the European Commission publishes as soon as possible their guidelines indicating the appropriate levels of CO<sub>2</sub> purity and of trace elements within the CO<sub>2</sub> stream for CO<sub>2</sub> storage projects contributing to the Union's injection capacity objective – as per stated under Article 20(7) of the NZIA.

- Subparagraph (g) includes information that could be too commercially sensitive, including planned sources/providers of CO<sub>2</sub> and a list of specific commercial agreements. Therefore ZEP recommends to revise this provision in such a way that it does not prejudice the CO<sub>2</sub> storage operators' commercial interests and/or violate their agreements with emitters and infrastructure providers.
- Subparagraph (h) asks that entities disclose their expected Final Investment Decision (FID) dates. It yet unclear whether the European Commission will provide specific criteria to define the scope of FIDs or whether this will be left to the entities to determine.
- In Article 5(2), ZEP also suggests further specifying what “key technical and commercial decision points” are referring to. ZEP recommends providing specific examples to ensure uniform interpretation and application of these terms.

Finally, what seems to be missing from this list is a clear indication of whether an obligated entity plans on entering an agreement with another entity and/or invest in storage capacity held by third parties to meet their individual contribution. While this will be the subject of another Delegated Act (see chapter 6 of this document), the reports referred to in Article 23(6) of the NZIA should also contain this information.

## 5. Entry into force & Timelines

According to Article 23(4), each obligated entity is expected to submit to the European Commission by 30 June 2025 a plan specifying in detail how they intend to meet their contribution to the EU CO<sub>2</sub> injection capacity target. This leaves very little time for the co-legislators to agree on the provisions outlined in this Delegated Act, let alone for the obligated entities to prepare the relevant material.

The tentative timeline for this Delegated Act already seems to indicate that it will be challenging to finalise its adoption before the 30 June 2025 deadline: once the public consultation ends (16 April), the European Commission will probably require up to two weeks to review the feedback and formally adopt the final Delegated Act before sending it to the co-legislators, who will have two months to raise any potential objection. Given the short period of time between the planned adoption of the Delegated Act, the subsequent Decision assigning obligations to individual entities, and the deadline for submission of the June 2025 compliance report, it will be very challenging for obligated entities to prepare and consolidate their plans outlining their compliance

pathway to 2030. As Recital 12 states, it is imperative that this Delegated Regulation enters into force “as a matter of urgency” – so as to inform obligated entities promptly of their expected contributions to the EU CO<sub>2</sub> injection capacity target.

In addition, ZEP also urges the European Commission to publish as soon as possible their assessment of the relationship between the demand for injection capacity from CO<sub>2</sub> capture projects, the main infrastructure needed for the transport of CO<sub>2</sub> in progress or planned to be operational by 2030, and the sum of the individual contributions of obligated entities – as foreseen in Article 23(11) of the NZIA. This assessment is due by 2028, but we very much encourage the European Commission to work on this evaluation and to publish the results *well before* 2028. It will be key to resolve uncertainties and help obligated entities plan clear compliance pathways, including the timing of FIDs across the value chain.

The current lack of CO<sub>2</sub> infrastructure combined with the risks of permitting delays – especially in Member States that have not established regulatory frameworks for the capture, transport, and geological storage of CO<sub>2</sub> – could result in some delays in the progress toward the Union-wide target of 50 million tonnes of annual CO<sub>2</sub> injection capacity in the EU by 2030. It is crucial that the European Commission and the Member States engage with the relevant entities to help resolve obstacles and barriers so as to facilitate the achievement of their obligation (as per Recital 46 and Article 23(11) in the NZIA).

## 6. Arrangements with third parties & Detailed conditions for exemptions/derogations

This draft Delegated Act specifically addresses the subparagraphs (a) and (c) of Article 23(12) of the NZIA, namely the fact the European Commission is empowered to adopt Delegated Acts on:

- (a) the rules concerning the identification of entities subject to a contribution, including the threshold below which entities are exempt from contribution;
- (c) the content of [the annual reports obligated entities shall submit to the Commission detailing their progress towards meeting their contribution].

ZEP strongly encourages the European Commission to also provide a Delegated Act for the measures outlined in subparagraphs (b) and (d) of Article 23(12) of the NZIA, namely those on:

- (b) the arrangements whereby agreements between entities and investments in storage capacity held by third parties are taken into account to meet their individual contribution;
- (d) the detailed conditions under which the Commission may grant an exemption or a derogation to entities.

The uncertainties surrounding the provisions aforementioned create risks for the implementation of the NZIA and progress towards the EU CO<sub>2</sub> injection capacity target.

For instance, according to Article 23(7) and Article 23(8) of the NZIA, a Member State can request that authorisation holders located in its territory are exempted from an obligation to contribute to the CO<sub>2</sub> injection capacity target provided that, *inter alia*, the overall injection capacity in the territory having obtained FID already exceeds the sum of these same entities' individual contributions in relation to their production activities in 2020-2023. Obligated entities are required to submit their plans to the European Commission by 30 June 2025, yet applications for exemptions can be submitted until the end of 2027. It is unclear how the exemption of one or more entities at a later stage will affect the individual contribution of other obligated entities, especially considering that they are directly derived from the non-exempted total EU production (as specified in Article 4 of this draft Delegated Act).

For transparency and clarity purposes, ZEP recommends making a clear distinction between exemptions that are granted to (a) SMEs on the basis of their “financial and technical means” (Recitals 4 and 5 of this draft Delegated Act, as discussed in Chapter 1 of this document), and (b) obligated entities located in a country where the overall injection capacity exceeds the sum of their individual contributions.

## **7. Supporting efforts towards meeting the EU CO<sub>2</sub> injection capacity target, including through the creation of lead markets for low-carbon products**

Creating regulated demand markets for low-carbon products under the forthcoming Industrial Decarbonisation Accelerator Act (IDAA) could accelerate demand for CO<sub>2</sub> capture across the EU. Additionally, supporting capturers through instruments such as Contracts for Difference as well as through fiscal incentives and other forms of financial support will be key. The Industrial Decarbonisation Bank announced by the European Commission in their Communication on the Clean Industrial Deal could play a significant role in this context. In the absence of complementary rules to generate demand for CO<sub>2</sub> storage and to support the build-out of CO<sub>2</sub> transport infrastructure, the business case for CCS projects and the compliance timeline for obligated entities in the scope of the EU CO<sub>2</sub> injection capacity target remain highly challenging.

To achieve the 50 Mtpa CO<sub>2</sub> injection capacity target by 2030, it is vital to develop demand for CO<sub>2</sub> capture at scale, build out infrastructure, and ensure timely permitting. Synchronising the build-out of storage with demand for CO<sub>2</sub> capture and infrastructure development is key to enabling FIDs on full CCS value chains, including storage capacity. Therefore ZEP urges the European Commission to take these points into consideration in the implementation of the NZIA.

**About the Zero Emissions Platform**

*The Zero Emissions Platform is a consortium of experts from research organisations, industry, and NGOs established in 2005 and partly funded by the European Commission through Horizon Europe. ZEP runs the European Technology and Innovation Platform (ETIP) for CCS and CCU technologies, and co-chairs the Implementation Working Group no. 9 on CCS and CCU together with the Dutch and Norwegian governments under the European Strategic Energy Technology Plan (SET Plan).*

*Our mission is to accelerate the deployment of CCS/U technologies and the buildout of CO<sub>2</sub> infrastructure to reduce CO<sub>2</sub> emissions and help Europe meet its climate neutrality target by 2050. Our technical reports and policy recommendations build on the expertise and experiences of ZEP's members and wider network, which range from energy producers and industrial companies to infrastructure developers, technology and equipment providers, financial organisations, academic institutions, research centres, environmental NGOs, trade unions, and civil society organisations.*