



“LINKS” – Possibilities and Limitations for European Works Councils in the Maritime Transport Sector

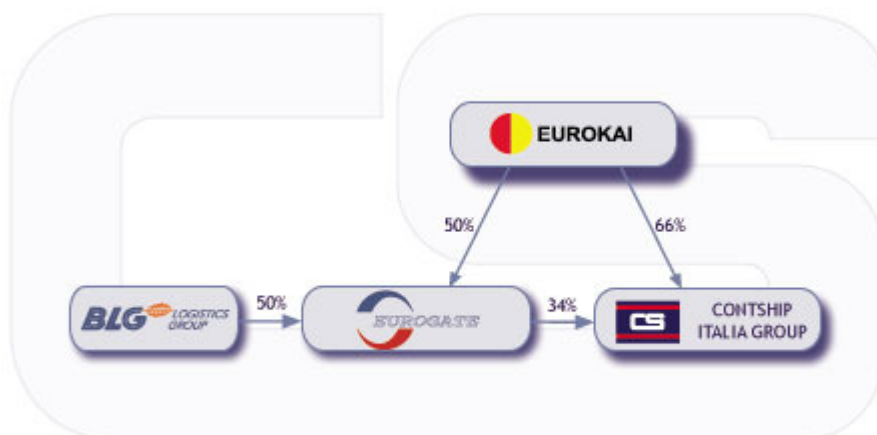
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Eurokai – Eurogate – Contship Italia**

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Eurokai

First of all it is necessary to clarify whether Eurokai fulfils the prerequisites for setting up an EWC.

Option 1: If Eurokai merely performs the function of a investment company, according to the EU Merger Regulations, and isn't directly involved in the management of Contship Italia, an EWC would not have to be set up for Eurokai. In this case an EWC for Contship Italia, would have to be established according to Italian law. However this wouldn't include the employees of Eurogate. According to their business report, Eurokai is purely a finance holding company.

Option 2: If Eurokai were to be involved in the management of Contship Italia, an EWC for Eurokai including Contship Italia would have to be set up according to German law. The fact that Thomas Eckelmann, CEO of Eurokai, is also member of the management team of Contship Italia speaks in favour of this solution. This EWC could, but wouldn't automatically, include the employees of Eurogate.

BLG

The Bremen warehouse company (BLG AG) disposes over two further subsidiaries apart from their participation in Eurogate: BLG Logistics Automobile with about 1,500 employees and BLG Logistics Contract with about 1,700 employees. These two subsidiaries are represented in the UK, Italy, Austria and Slovakia with majority interests. Therefore presumably an independent EWC should be established for BLG Logistics Group according to German law. However this EWC wouldn't automatically include the employees of Eurogate.

Eurogate

Eurokai holds 50% of Eurogate shares and the BLG Logistics Group hold the other 50%. The legislator hasn't made any clear regulations for such cases. Legal technical literature and jurisdiction reveal contradictory opinions.

Option 1: Some lawyers hold the view that the staff of the subsidiary which is a joint venture (50:50) - such as Eurogate - can't be part of the European works councils of the parent companies. So an additional, independent EWC would be most suitable for Eurogate according to German law.

Option 2: Other legal opinions would favour the assignment of the staff of Eurogate to one of the two parent companies. In this case the employees of Eurogate would be represented by the EWC at Eurokai **or** the EWC at BLG.

However the legal issue (option 1 or option 2) only needs to be solved, if no bargaining solution can be found to form a legal EWC. In practice an EWC agreement is negotiated in 99% of all cases, an EWC by law is the exception.

Priority for bargaining solution

In the case of a bargaining solution the two parties, that is the special negotiating committee (SNB) and the employer, decide which construction is chosen. It is at the discretion of the negotiating parties whether the employees of Eurogate are represented by the EWC of Eurokai or the EWC of BLG Logistics Group or whether an additional EWC is set up for Eurogate. The foundation of an EWC for Eurogate is also possible if no EWC is founded for the parent companies.

The following possibilities would be conceivable:

Maximum solution, three European works councils:

- 1 EWC for Eurokai, inclusive of Contship Italia
- 1 EWC for BLG
- 1 EWC for Eurogate

Minimal solution, only an EWC:

- 1 EWC for Eurogate (inclusive of Contship Italia)

Mixed construction, several European works councils with a common bracket:

- 1 EWC for Eurokai
- 1 EWC for BLG
- 1 common committee for Eurogate

Other constructions are also conceivable.

Further procedure:

1. Acquisition of data

The workers' representatives of Eurogate in Germany and of Contship Italia have the right to information from the management. This applies particularly to data about company structure and staff size in individual countries but also data concerning exact locations. The European court of justice in Luxembourg has confirmed this right in several cases.

2. Formulation of a draft

Before discussions are held with the employer, the trade unions and workers' representatives involved should reach a joint position. The result of this discussion process should be a draft for an EWC agreement. This is then presented jointly to the central management.

3. Proposal to set up a special negotiating committee

The official procedure for establishing a European works council starts when the proposal to form the special negotiating committee (SNB) is made. The SNB negotiates with central management and reaches an EWC agreement. Its composition is regulated by law, the election of its members is determined by the respective national regulations.

Possible problems:

If the request to form the SNB is made too early, the employees' side puts itself down under unnecessary time pressure because the deadlines are determined by the day of the request by two countries. The amount of time involved in finding a candidate and for the election of delegates in all countries, as well as for the discussion of a common strategy shouldn't be underestimated. However if the employer holds a blockading stance and would like to avoid the establishment of a European works council, the fastest way is through an immediate proposal because after six months at the latest an EWC must then be formed by law, according to the subsidiary requirements of the EWC Directive.

