



Eurex Clearing AG

Frequently Asked Questions - Legal Opinions –

March 2024



Frequently Asked Questions - Legal Opinions -

Last Update - March 2024 -

I. General Questions¹

1. Where can I find the legal opinions?

In order to access legal opinions via the member section of Eurex Clearing (“**Eurex Clearing**”), a respective member section log in needs to be available. Log in data will be provided by Eurex Clearing during the onboarding process of a Clearing Member.

Weblink to member section: <https://membersection.deutsche-boerse.com>

2. Who are the addressees of the legal opinions provided by Eurex Clearing?

All legal opinions available on the Member Section for download are prepared at the request of Eurex Clearing. In particular, the opinions constitute a legal advice only with respect to Eurex Clearing and do not constitute legal advice with respect to any Clearing Member, ISA Direct Clearing Member, FCM Clearing Member, Direct Client or Indirect Client.

The legal opinions shall not be relied upon by any Clearing Member, ISA Direct Clearing Member, FCM Clearing Member, Direct Client or Indirect Client and cannot substitute the receipt of an own legal advice.

However, the CRR Opinions can also be used by Eurex Clearing’s Clearing Members and ISA Direct Clearing Members

- (i) to be presented to their respective relevant financial supervisory authorities,
- (ii) to be submitted upon such authorities’ request, in order to obtain regulatory acceptance under the applicable capital adequacy rules or
- (iii) to their auditors for accounting purposes.

Further, Clearing Members may submit the CRR Opinions to their Direct Clients and affiliates, provided that

- (i) it may not be relied upon by those customers or affiliates,

¹ While reasonable care has been taken in the preparation of this publication to provide details that are accurate and not misleading at the time of publication Eurex Clearing

- (i) does not make any representations or warranties regarding the information contained herein, whether express or implied, including without limitation any implied warranty of merchantability or fitness for a particular purpose or any warranty with respect to the accuracy, correctness, quality, completeness or timeliness of such information, and
- (ii) shall not be responsible or liable for any third party’s use of any information contained herein under any circumstances or for any errors or omissions contained in this publication.

This publication is published for information purposes only and shall not constitute legal advice and shall not constitute an offer, solicitation or recommendation to engage in any other transaction with Eurex Clearing. If any Clearing Member, ISA Direct Clearing Member, FCM Clearing Member, Direct Client or Indirect Client is requested to undertake an independent verification or to seek independent legal advice.



Frequently Asked Questions - Legal Opinions -

Last Update - March 2024 -

- (ii) it may be made available to them solely for either information purposes or for the purpose of presenting the Memorandum to the respective relevant financial supervisory authorities of such customers or affiliates in order to satisfy prudential regulatory capital requirements in connection with applying a particular regulatory capital treatment to transactions affected by the netting provisions and insolvency law issues reviewed in this Memorandum and
- (iii) in the case of customers, Clearing Agreements or transactions corresponding to Transactions falling within the scope of the Clearing Conditions have been or will be concluded with such customers.

3. Which legal opinions does Eurex Clearing provide?

Eurex Clearing provides the following legal opinions:

- (i) **German Law CRR Memorandum (February 2022)**
Legal analysis on certain aspects of Articles 305 and 306 CRR under German law (“**German Law CRR Opinion**”)
- (ii) **English Law CRR Memorandum (February 2022)**
Legal analysis on certain aspects of Articles 305 and 306 CRR under English law (“**English Law CRR Opinion**”)

II. Questions and Answers regarding CRR Opinions

1. **What are the main contents of a CRR Opinion?**

The CRR Opinions provide a legal analysis on whether the clearing models offered by Eurex Clearing comply with the regulatory requirements stipulated by Art 300 *et seq.* of the CRR to enable Clearing Members, ISA Direct Clearing Members and their Disclosed Direct Clients to achieve a beneficial regulatory capital treatment in respect of its regulatory capital exposure arising from Transactions cleared via Eurex Clearing.

2. **Which CRR Opinion is relevant for whom?**

Which CRR Opinion is relevant for whom depends on whether the entity intending to achieve a beneficial regulatory capital treatment is acting as Clearing Member, ISA Direct Clearing Member or Disclosed Direct Client.

If the relevant entity is acting as Clearing Member or ISA Direct Clearing Member, the German Law CRR Opinion is of relevance for such entity as such CRR Opinion includes statements on the treatment of the exposure arising from cleared Transaction entered into



Frequently Asked Questions - Legal Opinions -

Last Update - March 2024 -

with Eurex Clearing and Eligible Margin Assets provided as Margin to Eurex Clearing.

If the relevant entity is acting as Disclosed Direct Client, the applicable CRR Opinion depends on the jurisdiction in which the Clearing Member of such Disclosed Direct Client is established (e.g. the English Law CRR Opinion is relevant for all Direct Clients using a UK based Clearing Member). For the avoidance of doubt, the jurisdiction in which the Direct Client is established is irrelevant.

The CRR Opinions do not provide for statements with respect to Indirect Clients.

3. For which jurisdictions is a CRR opinion available and why?

As the vast majority of Eurex Clearings's Clearing Members and ISA Direct Clearing Members have their registered seat in Germany and the United Kingdom, Eurex Clearing provides CRR Opinions with respect to German and English law.

If further market demands increase, Eurex Clearing may provide additional CRR opinions for other jurisdictions in the future as well.

4. How often is an update of the legal opinions available performed?

The legal opinions are part of a regular update process. In case of any ad-hoc changes to the legal environment, Eurex Clearing will perform an immediate update of the relevant opinion.

5. Which exposures are covered by the CRR Opinions?

The CRR Opinions provide for legal statements with respect to the following exposures:

(i) Relationship Clearing Member towards Eurex Clearing

- Covers statements with respect to the CRR requirements for contractual netting agreements, single net sum, bankruptcy remoteness and no recourse.
- The German CRR opinion is applicable for all Clearing Members regardless of their place of incorporation.

(ii) Relationship Disclosed Direct Clients towards Clearing Member

- Covers statements with respect to the CRR requirements for single net sum, segregation, bankruptcy remoteness and default porting.
- As the Clearing Conditions do not foresee any close-out mechanism with respect to the relationship between the Clearing Member and its Disclosed Direct Clients (see below under (iii)), the CRR Opinions are not able to provide for statements with respect to the enforceability of any close-out mechanism between Clearing Member and its Disclosed Direct Clients.

(iii) Relationship between ISA Direct Clearing Member and Eurex Clearing

- The German Law CRR Opinion and the English Law CRR Opinion additionally provide for statements on the relationship between an ISA Direct Clearing Member and Eurex Clearing.

Please note: as the Clearing Conditions do not foresee any close-out mechanism with respect to the relationship between the Clearing Member and its Disclosed Direct Clients, the CRR Opinions do not provide for statements with respect to the exposures of the Clearing Member towards its Disclosed Direct Clients in accordance with Art 304 CRR.

The agreement on a close-out netting mechanism as well as collateral arrangements needs to be covered by the client clearing documentation to be entered into between the Clearing Member and its Disclosed Direct Client. This needs to be covered by separate CRR opinions (either available industry opinions or individual opinions mandated by the Clearing Member).

6. Does Eurex Clearing publish legal opinions stating the enforceability of close-out netting arrangements?

Eurex Clearing does not provide specific “netting opinions” anymore, as such opinions only covered statements with respect to the enforceability of certain aspects of the clearing services offered by Eurex Clearing, such as the enforceability of the close-out mechanism and the security interests granted in favour of Eurex Clearing with respect to the Eligible Margin Assets.

However, such statements are now covered by the Eurex Clearing’s CRR Opinions, which do not only provide for statements regarding the general enforceability of certain provisions under the Clearing Conditions, but also provide for statements with respect to the requirements stipulated by Art 300 *et seq.* of the CRR enabling the Clearing Members and its clients to benefit from certain reductions of the own funds requirements under the CRR.

With respect to the enforceability of close-out netting arrangements foreseen in the Clearing Conditions, the CRR Opinions provide for statements on the enforceability of the close-out mechanism in case of the default of Eurex Clearing and the close-out mechanism in case of the default of a Clearing Member.

7. Do the CRR Opinions provide for statements on the exposure of a Clearing Member towards its Disclosed Direct Clients in case of a default of a client?

As the Clearing Conditions do not provide for a close-out netting mechanism in case of a default of the Disclosed Direct Client, the CRR Opinions do not provide for any statements in this regard. Rather, this needs to be regulated in the client clearing documentation to be

entered into between the Clearing Member and its Disclosed Direct Clients.

8. *If an ISA Direct Clearing Member is outsourcing all or part of the operational functions to its Clearing Agent, does the outsourcing ISA Direct Clearing Member have a negative effect on the statements in the German Law CCR Opinion with respect to the ISA Direct Clearing Member?*

Outsourcing does not change the status as an ISA Direct Clearing Member since the responsibility with respect to the discharge of any liabilities under the Clearing Conditions and the cleared Transactions remains with the ISA Direct Clearing Member. The German Law CRR Opinion and the English Law CRR Opinion also specifically cover this aspect with the result that through outsourcing the status of the ISA Direct Clearing Member is not affected.

9. *If collateral is provided to Eurex Clearing, can it be considered as being bankruptcy remote within the meaning of Art 306 (2) CRR? How will it be handled when calculating a Difference Claim? What would be the risk weight to be applied to a difference claim exposure?*

In this regard, it needs to be differentiated between Eligible Margin Assets provided as Margin to Eurex Clearing in the form of a pledge or in form of a transfer of title.

(i) Margin provided via transfer of title

If the relevant Eligible Margin Assets are provided via a full title transfer, such Eligible Margin Assets are considered within the calculation of the Difference Claim. Therefore, the question whether an exposure arises from the Eligible Margin Assets provided to Eurex Clearing via a full title transfer depends on who is owing the Difference Claim.

If as a result of the calculation a Difference Claim is owed by Eurex Clearing towards the Clearing Member, the close-out mechanism provided for in the Clearing Conditions would avoid any exposure arising from the Eligible Margin Assets provided to Eurex Clearing via a full title transfer. In such case, no own funds requirement arises from the collateral.

If, however, as a result of the calculation a Difference Claim is owed to the Clearing Member by Eurex Clearing, the Clearing Member would have an exposure to Eurex Clearing (also considering the Eligible Margin Assets provided via full title transfer). In such case a 2% risk weight applies with respect to such exposure (Art 306(1)(a) CRR).

(ii) Eligible Margin Assets in the form of securities provided to Eurex Clearing via pledge

If the (ISA Direct) Clearing Member provides any securities collateral via pledge to cover margin requirements, the risk-weighting is 0%, as collateral provided via pledge is bankruptcy remote within the meaning of Art 306 (2) of the CRR.



Frequently Asked Questions - Legal Opinions -

Last Update - March 2024 -

10. *Where can I find an overview of the risk weights to be applied when calculating Difference Claims for the Clearing Member's clients?*

A summary is available on the website of Eurex Clearing at

<https://www.eurex.com/ec-en/rules-regs/regulations/legal-opinions>