This is an extract from Ovum's Regulatory Scorecard. The scorecard is produced using information from our ongoing discussions with national regulatory authorities (NRAs) and publicly available material. It compares the regulatory obligations imposed in key retail and wholesale markets.
This is an extract from the Ovum Regulatory Scorecard 2013: Europe. Scorecards are available for Europe, Asia-Pacific, and Latin America. All three scorecards are available to purchase as single reports or as part of an Ovum Telecoms Knowledge Center subscription.

**About Ovum's Regulatory Scorecard**

The second iteration of Ovum’s annual Regulatory Scorecard has assessed and ranked the regulatory performance of 11 countries across three geographic areas, noting striking differences between their respective regulatory frameworks.

"Countries within the same area may rank very differently; for example, Mexico appears significantly behind its counterparts in Latin America under almost every respect of the regulatory environment."

Matthew Howett, Practice Leader

The Regulatory Scorecard 2013 allows you to:

- Easily understand how the same products and services are regulated across countries
- Benchmark regulatory performance and effectiveness of NRAs' activities
- Learn which countries are considered best practice and which are lagging
- Support regulatory decision-making and engagement between operators and NRAs
Germany and Spain are best placed to fulfil their plans for deployment of superfast broadband

- Of the EUS, only the UK had fully transposed the latest European Regulatory framework on time. All other countries have done so with some delay (more than a year for Germany and Italy).
- All the EUS have started the third round of reviews of regulated markets, although Spain and the UK have largely only carried out the second.
- All the EUS have a broadband strategy in place, but targets and current statuses vary considerably across countries. Germany and Spain look best placed, but most countries (Italy in particular) look unlikely to meet their objectives based on current rollouts.

Only the UK has a clear position on net neutrality

- In general, regulators have taken a wait-and-see approach towards the issue of net neutrality. None of the five countries has rules in place, although the UK has set out a clear position and the discussion has been very lively in France, where ARCEP has issued a set of proposals to the legislator.
- All the EUS, with the exception of Italy, have adopted some regulations against illegal file sharing.
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<tr>
<td>National regulatory authority (NRA)</td>
<td>The Autorité de Régulation des Communications Électroniques et des Postes (ARCEP) is the independent body overseeing communications and post. It was established in January 1997.</td>
<td>The Bundesnetzagentur (BNetzA) is responsible for the regulation of telecoms. It is supervised by the Federal Ministry of Economics and Technology.</td>
<td>The Autorità Garante delle Comunicazioni (AGCOM) is the independent body responsible for governing the telecoms and broadcasting sectors. It reports to the parliament, not to the government. It was founded in 1997 by means of Act 249/1997.</td>
<td>The Comisión del Mercado de las Telecomunicaciones (CMT) is the independent national regulatory authority. It was created by Royal Decree-Act 6/1996, of June 7, 1996 (Liberalization of Telecommunications).</td>
<td>The Office of Communications (Ofcom) became the national regulatory authority at the end of 2003 when it took over from OfTEL (the Office for Telecommunications).</td>
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<p>| Independence of the NRA from the government | The French parliament is exclusively responsible for allocating the yearly budget to the regulator. The chairman of the authority is appointed by the French president on the proposal of the prime minister. The government maintains a 27% stake in France Telecom (FT). | The income and expenditure of BNetzA is budgeted for in the federal budget, within the departmental budget of the Federal Ministry of Economics and Technology. The president and two vice-presidents of BNetzA are appointed by the German president on the proposal of the advisory board of BNetzA and acceptance by the minister of economics. The government maintains approximately a 30% share in Deutsche Telekom (DT). | AGCOM is mainly funded by the operators. The NRA issues annual determinations on the amount they are due to pay. The government appoints the president, whereas the parliament elects the commissioners. The state has no stake in the incumbent. | The CMT has its own assets, independent from those of the state. The NRA is funded from its own resources, and from taxes accrued from the provision of services and from the CMT's functions. The state has no stake in the incumbent. | Ofcom is funded by those it regulates, independent from the state budget. There is no government involvement in appointing the head of the regulator. The state has no stake in the incumbent. |</p>
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<td><strong>NRA’s main duties and responsibilities</strong></td>
<td>ARCEP regulates the telecoms markets and, since 2005, the postal sector.</td>
<td>BNetzA provides for the further development of the electricity, gas, telecoms, and postal markets, and the railway infrastructure market through liberalization and deregulation. In telecoms, it ensures competition, provision of universal services, and efficient use of spectrum frequencies.</td>
<td>AGCOM has overall responsibility for regulatory matters relating to communications. It also handles broadcast and telecoms network-related issues.</td>
<td>The CMT is responsible for national electronic communications and audiovisual services markets. It also provides advisory services to the government and MINETUR at their request or acting on its own initiative on any issue related to the market and communications regulation.</td>
<td>Telecoms, broadcasting and radio communications, post (only since June 2011), infrastructure, and content regulation. Also the enforcement of competition rules in concert with the Office of Fair Trading (OFT).</td>
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<td><strong>Implementation of the EC’s revised (2009) regulatory framework</strong></td>
<td>France incorporated the EC’s 2009 regulatory framework into its legislation by means of Presidential Ordinance 2011–2012 in August 2011. The secondary part of the transposition occurred by way of two decrees in 1Q12.</td>
<td>In June 2012 the EC announced that since it wrote to Germany in November 2011, the country had fully transposed the revised EU regulatory framework, albeit a year after the deadline.</td>
<td>Italy implemented the EC’s directive of 2009 in June 2012 via Decree 70/2012, which amended the Electronic Communications Code. Italy was one of the 16 countries to which the EC wrote in November 2011 after they failed to comply with the May 2011 transposition deadline.</td>
<td>Spain implemented the latest European regulatory framework in March 2012, ten months after the May 2011 deadline.</td>
<td>Ofcom implemented the updated framework on time (May 2011) through revised General Conditions and updated Universal Service Conditions.</td>
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<td>Appeals against NRA decisions</td>
<td>Appeals against ARCEP’s decisions are heard in administrative courts, either the Conseil d’État or the Tribunal Administratif.</td>
<td>BNetzA’s decisions may be challenged directly before, and overturned by, the administrative courts. However, the decision process is very slow – the average timeframe for an appeal process is two to four years. BNetzA’s decisions can also be subject to judicial review by the German Federal Ministry of Economics and Technology (BMWi).</td>
<td>Appeals against decisions by AGCOM can be made before the Tribunale Amministrativo Regionale (TAR) and, in a second stage, the Council of State. The implementation of AGCOM’s resolutions is not interrupted by an appeal, unless the appealing party also issues a request for the suspension.</td>
<td>Appeals against the CMT’s decisions can be made before the CMT itself or directly to the National Court. The CMT’s resolution will remain valid when appealed unless the body responsible for the appeal, generally a tribunal, orders its suspension.</td>
<td>Appeals against Ofcom go to the Competition Appeals Tribunal (CAT), or to the Competition Commission (CC) if the matter concerns price control.</td>
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<td><strong>Scope of the Universal Service Obligation (USO)</strong></td>
<td>Article 35-2 of CPCE defines the scope of the USO. Operators subject to it are designated by the Ministry for Electronic Communications. FT has a mandate to provide public payphone services, and it was renewed for two years in February 2012. Its mandate to provide fixed telephony services ends on December 13, 2012.</td>
<td>The TKG defines universal service in almost identical terms to the EC’s Universal Service Directive of 2009. In the 2010 review of the TKG, measures were proposed to impose obligations to provide a nationwide broadband service with a certain speed, although they were ultimately dropped.</td>
<td>Section IV of Decree 259/2003 defines the scope of the USO. AGCOM can designate universal service providers. The scope of the USO is reviewed by the Ministry of Communications every two years. Articles 62 and 63 of the decree regulate the funding mechanism for universal service provision.</td>
<td>Articles 21 and 22 of the General Telecommunications Act define the scope of universal service, defined as those services guaranteed to all end users, regardless of their geographic location, at a determined level of quality and an accessible price.</td>
<td>The scope of the USO is defined by the EC’s universal services directive of 2009. The Secretary of State for Trade and Industry (and not Ofcom) specifies the services that must be provided throughout the UK. The USO was revised in 2011 to incorporate the EC’s updated regulatory framework.</td>
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<td><strong>Designated Universal Service Providers (USPs)</strong></td>
<td>FT is the designated provider for fixed and public payphone services. Yellow Pages is mandated to provide the directories and information services.</td>
<td>At present, no undertaking has been designated to provide universal services, although universal services are provided by DT. If DT intends to stop providing universal services, or to offer them under less favorable conditions, it is obliged to notify BNetzA of its intentions a year prior to their taking effect. If no company says it is prepared to provide the universal service, BNetzA can oblige the regionally dominant license-holder to provide the universal service.</td>
<td>Telecom Italia (TI) is the designated provider of universal service. AGCOM reviews the quality objectives of the USO annually.</td>
<td>Telefonica is the only USP in Spain until 2017, as designated by MINETUR in November 2011.</td>
<td>There are currently two USPs: BT, which provides services to all of the UK except Hull, and Kcom, which is designated the USP for Hull.</td>
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<p>| <strong>Main services included within the scope of the USO</strong> | Fixed telephony, public payphones, and universal directory and information services are subject to the USO at the national level. | Must include a minimum set of services of specified quality level, which are available to all users regardless of their geographical location and (in light of specific national conditions) at an affordable price. These must include the provision of access at a fixed location, directory inquiry services and directories, and public pay telephones. | Fixed telephony, narrowband Internet connections, public pay telephones, at an affordable price and minimum level of quality. In June 2012 Decree 259/2003 was updated to include “functional Internet access”, considering the prevalent technologies and the technical feasibility within technical standards established by the ITU. | Telephony, call support services (i.e. phone directory and customer phone number inquiry), provision of payphones, and special tariffs for low-income customers. In accordance with Article 52 of the Sustainable Economy Act, the scope of the USO was extended to include broadband access at a minimum download speed of 1Mbps. | A special tariff scheme for low-income clients; connection to the fixed network, including functional Internet access (i.e. at least 28Kbps); reasonable geographic access to public call boxes; and a range of services for clients with disabilities, including the text replay service. |</p>
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<td>National broadband plan/strategy</td>
<td>On November 30, 2011 the French Government presented the country’s digital strategy for 2020 in a document called “France Numérique 2012–2020: Bilan et perspectives”. The goal is to have 100% high-speed Internet coverage by 2025 and to release 450MHz of spectrum for use by mobile broadband services.</td>
<td>In 2009 the German government launched its broadband strategy with two main objectives: to achieve 100% coverage of 1Mbps connections by 2010, and to make 50Mbps connections available to 75% of the population by 2014.</td>
<td>In February 2009 the government launched a plan for 100% coverage of 2Mbps by 2012 (at least 94% with speeds of 4Mbps). In November 2010, a memorandum of understanding was signed between the government and the main operators to devise “an open, neutral, future-proof passive infrastructure” to cover 50% of the population in line with the EC’s Digital Agenda targets.</td>
<td>In August 2010 MINETUR announced a €200m plan (Plan Avanza 2). The funding is available to (i) expand broadband coverage at the “basic speed” (1Mbps) to all areas, and (ii) provide broadband with speeds of 10Mbps (80% coverage target by 2015) and 50Mbps (50% coverage target by 2015).</td>
<td>The “Universal Service Commitment” is in place to ensure the delivery of 2Mbps broadband to every UK home by 2012. In addition, the £1bn Next-Generation Fund aims to deliver next-generation broadband to 90% of the country by 2017.</td>
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<td>Progress against national broadband plan/strategy</td>
<td>Broadband services (of 128Kbps and above) are available to 99% of households in France. Connections reaching 100Mbps are available to approximately 20%.</td>
<td>In 2012 broadband at 1Mbps was available for over 99% of households. 50Mbps broadband was available for 40% of German households.</td>
<td>Approximately 90% of the population have access to 2Mbps speeds, while approximately 10% have access to 100Mbps speeds.</td>
<td>MINETUR reports that broadband at a minimum speed of 1Mbps is available to 99% of the population. 100Mbps broadband is available to 40% of households.</td>
<td>At present, coverage of 2Mbps connections is at 100%, while 24Mbps or faster connections are available to 63% of UK households.</td>
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### Measures designed to tackle illegal file sharing

**France**
The HADOPI law was passed in May 2009. It ruled the creation of an agency (HADOPI) which monitors copyright infringement and imposes sanctions on offenders in a “three strikes” approach (email to the user, certified letter, suspension of Internet access).

**Germany**
Rights-holders have been able to pursue illegal file sharers through ordinary lawsuits, but revisions to local copyright made it possible to get court approval for requests to ISPs to unveil a subscriber’s identity. Content owners then can send letters to alleged infringers, asking them to pay anywhere between €300 and €1,200 ($430 and $1,720) per unlawfully shared file.

**Italy**
AGCOM carried out two consultations on the matter. The latest one, opened in July 2011, contained a draft regulation proposing a “notice and take down” approach for the “selective removal” of illegitimate copyrighted content. No measures towards end users are envisaged at present.

**Spain**
In January 2012 the government approved the second measure of the Sustainable Economy Act. An Intellectual Property Commission was created within the Ministry of Culture, with the power to suspend services or remove content in breach of intellectual property law, following judicial authorization.

**UK**
The Digital Economy Act of June 8, 2010 contains provisions for a “three strikes” approach (i.e. a notification system in three stages) involving copyright-holders, ISPs, and final users. The enforcement of the Act will be monitored by Ofcom, which is responsible for regularly reviewing the code and the outcomes of its adoption.

In June 2012 Ofcom published a draft anti-piracy code, which proposes sending letters to individuals suspected of piracy.

### Regulatory position towards net neutrality

**France**
In September 2010, ARCEP published 10 proposals and recommendations. These set out the future path that the regulator would follow.

In September 2012 ARCEP submitted its report on net neutrality to the government and parliament. The report provides a technical and economic analysis of the debate, as well as recommendations to improve transparency and quality of service.

As yet no regulatory action has taken place.

**Germany**
There has been no specific policy developed yet. In 2010 the German Parliament published a paper which stated that ministers believed existing competition will ensure the neutral transmission of data on the Internet and other new media. They committed to observing the situation closely and, if necessary, taking countermeasures to preserve net neutrality. It was recommended that a vote take place to develop a position; however, the vote was postponed several times.

**Italy**
AGCOM has not intervened with regulatory measures. In December 2011, the NRA completed a consultation to seek stakeholders’ views. It concluded that traffic management does not represent in itself a form of market failure, and intervention has to be considered to ensure more transparency towards end users. The consultation also endorsed the monitoring of Internet service pricing and levels of competition.

**Spain**
There has been no policy developed yet. The CMT initially discussed net neutrality in 2007 in an NGA consultation. The CMT was interested in the implications that ex-ante regulation on net neutrality could have on wholesale and retail broadband access prices.

**UK**
In November 2011 Ofcom established its position on net neutrality. It permits experimentation with new business models that rely on certain forms of traffic management, so that the “best-efforts” Internet is protected. Through a transparency obligation, customers should be made aware of average speeds, the impact of any traffic management on specific types of service, and whether any services are blocked.
# Issues

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<td>Markets analyzed according to the EC’s recommendation on relevant markets</td>
<td>Most markets, except Market 6, underwent the third round of analysis between April 2010 and July 2011. The second analysis of Market 6 was completed in April 2010.</td>
<td>The latest analysis of Markets 2 and 3 were completed in August 2012. Market 7 is currently under review for the third time. The EC often challenges BNetzA’s practice of issuing regulatory remedies separately from the market definition and SMP (significant market power) designation from each market review. The second reviews of other markets were carried out between 2009 and 2011.</td>
<td>The third round of reviews was underway at the time of writing for Markets 1, 4, and 5. Market 7 was reviewed for the third time in December 2011. Former Market 18 was subject to a second review in 2011, and will have ex-ante regulation in place until analog switch-off. Former Market 10 is still subject to regulation.</td>
<td>At the time of writing, the CMT was carrying out the third round of analyses of most markets. The third review of Market 7 was completed in May 2012. Markets 14, 15, and 18 of the 2003 Recommendation are still regulated and awaiting a third review.</td>
<td>Ofcom most recently reviewed most markets between 2009 and 2011, as well as the fixed narrowband and business connectivity markets in 2012. It has also set new charge controls for WLR and LLU. Ofcom continues to remove regulation where competition has rendered markets competitive. It has scaled back all regulation at the retail level, with the exception of the retail market for the minimum set of leased lines.</td>
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<td>Does the NRA consider sub-national markets?</td>
<td>No. ARCEP considered defining a sub-national market for bitstream access where competition to FT was present, but decided to define the market as national in scope.</td>
<td>No. Markets are defined as national in scope.</td>
<td>All markets are currently defined as national in scope. However, current obligations for fiber bitstream differ depending on the level of competition in each area.</td>
<td>The CMT has considered sub-national markets in the case of former Market 14 (trunk segments of wholesale leased lines).</td>
<td>Yes. Ofcom identified four sub-national markets in its wholesale broadband access market review of December 2010.</td>
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The Ovum Regulatory Scorecard includes scoring to allow you to assess the regulatory situation in the country and easily compare it to the regional average. Unique to Ovum, this scoring assesses six key aspects of the regulatory environment: Institutional and Regulatory Frameworks; Spectrum Policy and Awards; Retail Regulation; Wholesale Fixed Regulation; Wholesale Mobile Regulation; and Consumer Protection.

Note: This is an illustrative example and is not based on the countries studied.
OVUM REGULATORY SCORECARD 2013

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- Chile
- Paraguay
- Peru

Asia-Pacific
- Australia
- China
- India
- Malaysia
- New Zealand
- Taiwan

Middle East & Africa
- Bahrain
- Egypt
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