



Email archiving in Belgium

The key laws that affect your business

Email is a primary source of documentation for many organizations and it has taken on an increasingly critical role in corporate litigation and court cases.

The need to archive all email correspondence is growing in importance because companies are realizing that being in a position to retrieve an old email could save them thousands of dollars (euros) in legal fees and fines as well as their credibility.

Today, more than ever before, legal and compliance issues are driving the case for email archiving. Email archiving legislation is complex and varies greatly from country to country. Unless companies are well versed in compliance and email compliance law, the various regulations affecting email can be a minefield.

This document provides an overview of the archiving legislation in your country.

Laws regulating archiving

Under Belgian law, various legal requirements and considerations encourage and/or impact the electronic archiving of documents, including emails. Some of these requirements and considerations are of a general nature, others relate to specific archiving obligations.

The following general legal considerations are relevant when considering e-mail archiving:

- The law on evidence highly values proof by way of documents, thus increasing the need to archive documents in a proficient way so as to maximize one's chances to trace relevant emails which can be used in case of litigation;
- The rules on prescription ("prescription/verjaring") imply that legal claims must be brought within a certain period, after the expiration of which the claim shall no longer be valid. One must therefore define an archiving strategy and select a tool which can cater for the relevant prescription periods: if documents are destroyed before the expiration of the relevant prescription period, one shall no longer be capable of bringing a claim;
- The privacy legislation prescribes that personal data may not be retained for a period which is longer than what is necessary to realize the purpose for which such personal data were collected or processed (*Belgian Data Protection law of 8 December 1992, art. 4*). This requirement too calls for an archiving solution that can be configured in a flexible way, allowing it to accommodate different archiving periods for different types of documents.

In addition to the above general considerations, specific regulatory requirements may encourage/and or impact e-mail archiving. These regulatory requirements are sector dependent. Without being exhaustive, hereunder some examples of such regulatory requirements:

Banking

- *Law of 11 January 1993 on money laundering and financing of terrorism, art. 4*: a copy of the identifying document of clients must be kept during 5 years following the end of the relationship with the client.
- *Law of 2 August 2002 on the supervision of the financial sector, art. 9 and Royal Decree of 31 March 2003, Chapter VI*: data related to the transactions on financial instruments must be kept during 5 years after execution of transactions.
- *Law of 12 June 1991 on consumer credit, art. 69 and art. 5 and Royal Decree of 20 November 1992*: conservation periods of 15 days, 1 year, 12 months or 10 years after the expiration of the credit contract.

Insurance

- *Law of 9 July 1975 on the control of the insurance firms, art. 21*: documents related to the contracts subscribed by their Belgian institution must be kept during a mandatory conservation period fixed by OCl.

Telecom

- *Law of 13 June 2005 on electronic communications, art. 122 § 2*: an operator can process certain data up to the end of the period of dispute of the invoice or until the end of the period judicial in which payment can be enforced.
- *EU Directive 2006/24/EC of 15 March 2006, art. 1, art. 6*: Providers must retain data for purposes of investigation, detection and prosecution of serious crime for periods between 6 months and 2 years.

Healthcare business

- *Royal Decree of 3 May 1999 determining the general minimum conditions for the medical file, art. 2*: medical files must be kept in the hospital for at least 30 years.

Social security and social insurance companies

- *Law of 14 July 1994, art. 9bis, Royal Decree of 27 April 1999, art. 2 and 'Care net Protocol' of 19 April 2001 of the Belgian National Service for Medical and Disability insurance*: all documents exchanged between social insurance companies and hospitals have to be retained for 10 years.
- *Royal Decree of 3 July 1996, art. 318, 4° and Circular letter of 29 September 2005 of the Belgian National Service for Medical and Disablement insurance*: archiving periods vary from 3 years to an unlimited period.

Government

- *Law of 24 June 1955 on the archives*: Courts, the Council of State, the administration of the State and the provinces must deposit their documents older than 100 years at the national archive. Municipalities may do that. Documents deposited at the national archives of the Kingdom cannot be destroyed without the agreement of the authority which deposited them. Authorities cannot destroy any documents without the agreement of the archives. In practice, the hundred year period is reduced to a period of 30 years, being the minimum term during which documents must be kept.

Penalties

A number of the above mentioned regulatory requirements carry criminal sanctions, including fines and/or imprisonment. In addition, not being able to produce emails within the framework of a dispute settlement process may have serious adverse consequences for the party unable to produce the email.

GFI MailArchiver

GFI MailArchiver is used by thousands of administrators to comply with the various pieces of legislation that cover email archiving. GFI MailArchiver provides a secure central storage for all company email while allowing fast and easy access to old and deleted email if required.

Using the auditing functionality, management can access any email that is requested for eDiscovery/email compliance purposes and provide a guarantee that these emails have not been tampered with – a major requirement in corporate litigation cases.

With GFI MailArchiver, companies can also rest assured that they can:

- Reduce reliance on cumbersome PST files and manage and reduce mailbox quotas on Microsoft Exchange server
- Access and manage all archived email from anywhere in the world using their web browser
- Retrieve old and deleted emails on demand – with full thread and conversation
- Use advanced email search and 'Saved Search' capabilities

More information about GFI MailArchiver can be found at <http://www.gfi.com/mailarchiver/>.

