



## Email archiving in France

### 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

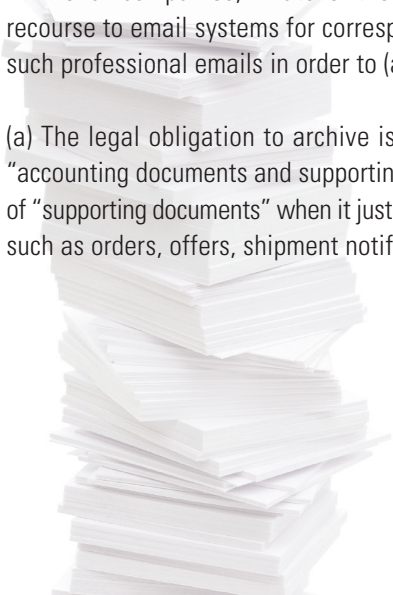
The obligation to archive professional emails (understood as electronic correspondence) and the requirements applicable to electronic archiving systems to ensure the validity of archived professional emails before a Court are set forth by the following regulations which constitute the main frame of rules applicable to professional email archives:

- Art. L. 123-22 of the French Commercial Code;
- Art. L. 110-4 of the French Commercial Code;
- Law n°2000-230 dated March 13, 2000 (on electronic evidence and electronic signature), completed by Decree n°2001-272 dated March 30, 2001;
- Law n°2004-575 dated June 21, 2004 (electronic commerce);
- Ruling n°2005-674 dated June 16, 2005 (concerning in particular electronic correspondence and electronic official letters with delivery receipt);
- Law n°78-17 of January 6, 1978 on Data Processing, Data Files and Individual Liberties.

#### Who is required to archive email?

All French companies, whatever their size, activities and clients (professionals or consumers, businesses or individuals) having recourse to email systems for correspondence internally or with their clients and suppliers, are subject to the obligation to archive such professional emails in order to (a) comply with a legal obligation and/or (b) store written evidence.

(a) The legal obligation to archive is mainly set forth under article L. 123-22 of the French Commercial Code which states that "accounting documents and supporting documents must be stored for ten years". Correspondence is usually included in the category of "supporting documents" when it justifies accounting entries. Authors agree that correspondence comprises commercial correspondence such as orders, offers, shipment notification, delivery notifications, etc.



## Penalties

If a company fails to archive such “supporting documents” or erases them before the term of the 10-year period, it may face the following penalties:

- A fine of €1,500 or €3,000 (in the event where the company cannot regularize its situation) – article 1740-1 and 1740 bis of the French General Tax Code;
- A fine up to €75,000 in the event where the Tax inspector would be prevented from accomplishing his mission (evidence of breach of Tax laws) and 6 months’ imprisonment (in case of repeated offences) – pursuant to articles 1737 and 1746 of the French General Tax Code;
- Tax authorities may reconsider the declarations made by the company.

(b) Professional emails constitute written proof of facts or obligations, whether internally or to/from third parties. Thus, it is a company’s duty to store and archive professional emails inasmuch as they could later be used as evidence in the event of litigation. Indeed, not archiving professional emails would incur material risks since the company would have little chance of successfully defending itself or summons third parties without any written evidence. It must be emphasized that written evidence is mandatory for all transactions exceeding €1,500. Unless otherwise stated by law, professional emails should be archived for a 10-year period (art. L.110-4 of the French Commercial Code).

## 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/>.

