



# Email archiving in the Netherlands

## 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 laws of The Netherlands do not impose a duty on small and medium-sized businesses to archive email in general.

Nonetheless there are various reasons why small and medium-sized businesses should consider archiving their email, after all.

- All businesses are obliged to keep an administration sufficient to be able to assess their rights and obligations at all times. These data must be retained for a minimum of 7 years (Articles 2:10 of the Dutch Civil Code (DCC)). This obligation to retain data only applies to emails that by content or attachment, must be considered (part of) the administration of the company.
- If information regarding the financial position of the business relevant to the levying of taxes is exclusively contained in emails, these emails must be retained for a minimum of 7 years. (Article 52 Dutch State Taxes Act (DSTA)).

Violation of these duties constitutes a criminal offence (Article 342 and 343 of the DPC and Article 68, subsection 2 of the DSTA) and may lead to directors' and officers' liability (Article 2:9, 2:138 and 248, subsections 2 DCC).

- Businesses providing professional services are in principle obliged to return any documents received from their clients, to their clients upon request. Since the client's claim for surrender of these documents prescribes after 5 years, it is advisable to keep the relevant emails for a minimum of 5 years. (Article 7:412 DCC)
- Dutch law of civil procedure has an open system of evidence (Article 152 Dutch Code of Civil Procedure). This means that in principle any document, including emails, can be submitted as evidence. However, the court is free to decide whether or not the document has any value as evidence, unless the law provides otherwise. Businesses can improve the value of their emails as evidence, by storing them in an archiving system that enables them to demonstrate the authenticity and integrity of the emails.
- Article 3:310 DCC stipulates that any claim for damages prescribes 5 years after the claimant has become aware of both the damage and the liable person. As such the date at which this 5 year term starts to run, is uncertain. It is therefore advisable to retain emails potentially relevant to claims much longer than 5 years.

### Who is required to archive email?

Please note that in The Netherlands companies employing over 50 persons are obliged to establish a works council. Since GFI MailArchiver, according to the documentation we received, can be used for internal inquiries and employee monitoring, consent of the works council may be required before installation thereof (Article 27 Dutch Works Councils Act).

Businesses using GFI MailArchiver should be aware that a collection of emails stored in / by means of GFI MailArchiver is likely to be considered a personal data filing system and the retrieval of emails therefore a form of processing of personal data. The Dutch Data Protection Act (DPA) imposes several obligations on businesses that control or process personal data, not limited to the obligation to take any appropriate technical and organisational measures against unlawful processing of personal data (Article 13 DPA) and the obligation to provide information on stored personal data and the use thereof to the person concerned (Article 33 DPA).

## 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/>.

