



## Email archiving in Italy

### 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

Firstly, in Italy, there is no legal obligation imposing an archiving duty in connection with emails; notwithstanding there are various legal acts that require expressly the archiving of business correspondence and, according to the Italian case law and the Italian Data Protection Commissioner's pronounces, emails are held as a form of correspondence.

Accordingly, in light of the progressive shift to paperless communications in the business all the following legal references shall have to be considered as prescriptions for the case correspondence or print out of mails is not organised and archived in paper files.

#### 1. Companies

In general terms, correspondence archiving duties apply to any Italian company. Some additional archiving obligations are set forth for specific areas of business: for the purposes of the present treatise we held of particular relevance to identify the ones operating in the capital market, although some other specific sectors may have some regulatory aspects imposing similar obligations. To this end please let us know if the business of GFI Software is oriented towards specific subjects, like, for instance, administrative authorities as this might involve additional searches on our side.

#### 2. Legislation and Penalties

As a general principle applicable to any company - pursuant to Sections 2214 and 2220 of the Italian Civil Code ("CC") concerning accounting records – letters, telegrams and invoices, concerning any business, shall be kept for 10 years from the date of the last entry. In the absence of any specification, such duty regards any kind of business correspondence, including emails.

In this connection, Section 2220 CC provides for that the above mentioned documents can be kept and recorded, also digitally, by means of a storage medium, under the condition that such digital records match the original documents and that, at any time, they can be made legible by means provided for by the user of the above mentioned storage medium.

The breach of the archiving duty provided for by the Italian Civil Code, with reference to the correspondence, does not involve specific penalties, but it could entail relevant consequences to the company's rights during possible civil or criminal judicial proceedings, where the exhibition of the above mentioned correspondence is ordered by the Judicial Authority.

Moreover, additional rules regard specifically companies operating in the capital markets:

- the Regulation no. 16190 of the Italian National Commission for the Listed Companies and Stock Exchange (named CONSOB) ("Regulation no. 16190") provides for that the financial promoters shall have to keep for 5 years copy of the correspondence with the subjects the promoter has acted on behalf of.
- according to the Regulation of the Bank of Italy and of CONSOB, concerning Section 6.2 bis of the Italian Financial Code (Law no. 58/1998) ("Regulation IFI"), the financial intermediaries, (such as banks, brokers, stock brokerage companies, open-end investment companies, etc.) shall have to keep, during the relationship with the client and for a period of five years afterwards, the contractual documentation concerning such relationship: documentation that could include emails too.

According to Regulation no. 16190 and Regulation IFI, the breach of the archiving duty could involve strict penalties, including a suspension of the company from the register of the financial intermediaries/promoters up to four months or a fine up to 25.000 Euros.

Finally, the Italian Data Protection Code (Law no. 196 of June 30, 2003) ("Privacy Code") grants all data subjects certain rights regarding information held about them (Section 7), including the right to access their personal data.

To this end, emails containing personal data shall have to be kept in compliance with the principles set out by the Code and, particularly, with the mandatory security measures provided for thereby (e.g. (i) computer authentication, (ii) implementation of authentication credentials management procedures, (iii) use of an authorisation system, (iv) protection of electronic means and data against unlawful data processing operations, unauthorised access and specific software, (v) implementation of procedures for safekeeping backup copies and restoring data and system availability).

Please consider that the emails, containing personal data, shall have to be cancelled or anonymized as soon as the purposes of the data processing are ceased. Accordingly an apt email archiving policy might certainly be of help in meeting these requirements.

The non-compliance with the mandatory security measures provided for by the Privacy Code can involve administrative fines and, under particular conditions, even criminal punishments.

## 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/>.

