



## Email archiving in Poland

### 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 email archiving issue does not, as such, constitute the subject of any explicit legal requirement under the Polish law. However, there are a number of regulations providing for the general data storage and protection requirements. The question of legal compliance with respect to email archiving can be examined from the perspective of external and internal compliance. With regard to the external compliance, as said above, there are no regulations, which would *expressis verbis* require any entity to archive the email communication. Various forms of archiving (e.g. paper copies, hard disk storage etc.) are equally admissible. The following acts are of certain significance as regards the data storage and protection issue:

1. The Accountancy Act of 1994. This act provides for a general requirement, imposed on any entity, to which accountancy obligations apply, to preserve and archive in proper matter any accountancy documentation (this includes relevant electronic communication) for the period of five years. However, no particular form, in which the documentation should be stored, is compulsory.
2. The Personal Data Protection Act of 1997. This legislation is addressed to any entity, being either a public body or a private entrepreneur e.g. banks, equity funds etc.), which in course of its duties or business activity, administers the data regarding natural persons (often submitted via electronic communication). The act imposes a number of requirements regarding the way the data should be stored and protected.
3. The Labour Code of 1994. This act generally imposes an obligation on the employers, to store all the employee's contractual documentation (this includes also relevant electronic communication) for the whole course of employment and afterwards. Also in this case, no particular form of archiving is compulsory.
4. The Confidential Information Protection Act of 1999. The acts introduces the obligations to properly gather and secure the information that contains state or professional secrets (these also include relevant electronic communication). The obligation is addressed to public bodies, as well as to private entities, which in course their activity obtain any such information.

#### Penalties

The non-compliance with all the acts listed above, may result in a strict criminal liability. Additionally, any damage caused by such non-compliance may constitute basis for tort liability.

Moreover, the law provides for a number of regulations, which are of minor importance, but often include the obligations to archive documentation and correspondence (however electronic communication is not expressly referred to). These are, first of all, any laws, regulations or instructions addressed to all sort of public bodies and institutions, local authorities etc., issued by the superior bodies. This relates to the vast area of the state administration legislation.

In many cases, when the law does not provide for a binding requirement of data archiving, it provides for a certain benefits for the entities, which actually archive and store their documentation and/or correspondence. One significant aspect of the above, appears in course of private law court arguments, when it comes to evidence examination, where the evidence of contractual document is generally always predominates. The pre-contractual documentation and/or correspondence may also prove significant, especially when it comes to cases of *culpa in contrahendo*, evidencing the course of negotiations etc.

### Who is required to archive email? ▼

Since the Polish law does not strictly and explicitly demand the archiving of electronic communication, the issues of an internal compliance become important. Many entrepreneurs, and not only the large corporations, but also small and medium businesses, adopt internal regulations, providing *inter alia* for email communication archiving. As mentioned above, by doing so, they put themselves in a better position, when it comes to a legal dispute. An archiving obligation is also commonly adopted by many public institutions and local authorities, by way of internal regulations and bylaws. Even when the superior body does not requests so, such obligations are often adopted by means of self-organisation.

### 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/>.

