

# The Long-Awaited Arrival of the E-archiving Law in Luxembourg

NautaDutilh is an international law firm with offices in Amsterdam, Brussels, London, Luxembourg, New York and Rotterdam. With more than 400 lawyers, notaries and tax advisers, it is one of the largest law firms in the Benelux region.

NautaDutilh is a full service business law firm with a strong client portfolio in the finance and the fast moving consumer goods sectors. It has also a niche expertise in the field of intellectual property and IT.

Vincent Wellens, head of the IP & ICT practice within NautaDutilh Avocats Luxembourg, represents major international clients on IP, trade practices, e-commerce, e-archiving and data protection issues in the consumer goods and IT sectors. He is admitted to both the Luxembourg and the Brussels bar and has practised IP/ICT and competition law at other first-tier Luxembourg and Brussels law firms.

Mr Wellens noted: “E-archiving has several benefits – the electronic storage of a critical mass of documents will have a lower cost than the storage of paper documents; employees or authorised persons can find documents more easily without even leaving their desk; and e-archived files can be more easily secured by passwords, etc.”

“In order to implement an e-archiving project, a multitude of laws and regulations must be taken into account in order to classify and archive business documents correctly. In the last month NautaDutilh Avocats Luxembourg worked intensively on a chart setting forth the conservation rules per type of document. “

Several notorious e-archiving firms and consultancy firms have contacted NautaDutilh Avocats Luxembourg in order to assist them with the legal aspects of e-archiving. Mr Wellens also gives in-house trainings within large corporations on the subject.

On February 13, 2013, the Luxembourg government submitted the long-awaited e-archiving act and accompanying grand ducal regulation (the Proposal) to the Luxembourg Parliament. The Proposal will bring about

several changes.

An electronic (or microform) copy of written agreements within the meaning of the Civil Code and commercial documents, which must be stored according to the Commercial Code, will be deemed equivalent to the original even if the paper version still exists. The conditions of equivalence will guarantee the authenticity and integrity of the copy but will be neutral from a technological perspective and in line with current archiving practices.

In addition, the burden of proof of the compliance with these conditions will be shifted for undertakings that wish to dematerialise and store their business documents, including contracts, by electronic means provided they use a certified dematerialisation and conservation service provider (PSDC). Further, two new categories of ‘support’ financial services professionals will be introduced.

Mr Wellens commented: “The law proposal on e-archiving has already created a real demand for advice on Luxembourg document conservation rules. It is expected that the demand will only increase once the proposal is definitively adopted as a law, most probably in autumn of this year. Future work will not only focus on the classification of documents according to conservation rules, but is also expected to deal with contractual arrangements with e-archiving solution providers and other subcontractors involved, such as hosting service providers.”

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