

# GMS Flash Alert

2023-223 | November 22, 2023



## European Union – Calling on Greece and Italy to Comply with Family Benefits Rules

In November 2023, the European Commission (EC) decided to open an infringement procedure against Greece<sup>1</sup> and to send a reasoned opinion to Italy<sup>2</sup> for not complying with European Union (EU) rules for family benefits.

Both countries present requirements for residence to foreign nationals, for example to mobile workers, to be eligible for family benefits. The EU regulation for coordination of social security<sup>3</sup> prohibits requirements for residence for receiving social security benefits, such as family benefits.

Greece now has two months to respond and take necessary measures, and if they do not, the EC may decide to send a reasoned opinion to Greece.

Italy has two months to respond and take necessary measures, and if they do not, the EC may decide to refer the case to the Court of Justice of the European Union (CJEU).

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### WHY THIS MATTERS

In the event that the Greek and Italian governments end up changing their legislation concerning family benefits and thereby remove the requirement for residence, such change will have retroactive effect. This means that any mobile workers currently subject to the existing restrictions on entitlement to family benefits from Greece and/or Italy will be eligible for retroactive claims for family benefits from these countries if they were not deemed eligible for family benefits by virtue of the residence requirement.

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## Overview of Cases

### Greece

According to Greek legislation, only EU nationals who have been residing with their children in Greece for at least five years are eligible to apply for family benefits. Non-EU nationals who are covered by the EU social security coordination rules can only apply for family benefits after residing in Greece for at least 12 years.

The EU coordination rules for social security prohibit residence requirements for receiving social security benefits, including family benefits. That is why the EC finds the Greek legislation for family benefits breaches EU law on the grounds of discrimination.

### Italy

In March 2022, Italy introduced a new family allowance for dependent children. This allowance is awarded only to people residing in Italy for at least two years. The EC views this requirement for minimum residence in Italy as discrimination and a breach of EU law, because, as previously noted, EU coordination rules for social security prohibit any residence requirement.

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## MEIJBURG & CO. INSIGHTS

Cases about restrictions to access on family benefits that are based on requirements for residence constitute a breach of free movement of people in the EU and are therefore a breach of EU law.

If Greece and Italy fail to align their respective national legislation with EU law and coordination rules for social security, it is highly likely that the infringement procedures initiated by the EC will lead to proceedings before the CJEU.

Regardless of whether Greece and Italy change their legislation on their own merit or because of the court proceedings before the CJEU, such a decision will mean that the requirements for residence were illegal from the time they were implemented in national law. If any person, for example a mobile worker, was denied access to family benefits due to residence requirements, those individuals potentially will have a right to a retroactive claim for family benefits from these countries.

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## FOOTNOTES:

1 European Commission: [November infringement package: key decisions](#), 16 November 2023.

2 European Commission: [November infringement package: key decisions](#), 16 November 2023.

3 European Union: [Regulation 883/2004/EC on coordination of social security systems](#), 29 April 2004.

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## Contact us

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