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**BRUSSELS PROHIBITS
ARBITRATION CLAUSES IN
RESIDENTIAL LEASES**



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A new ordinance of the Brussels Region invalidates arbitration clauses in residential leases. Parties are free to opt for arbitration once a dispute has arisen, but they may not do so upfront. Arbitration clauses in retail or office leases remain valid.

The rule was published in the Moniteur / Staatsblad of 30 October 2017. It is now set out in Article 233, §2, of the Brussels Housing Code, inserted by the Ordinance of 27 July 2017 on the Regionalisation of Residential Leases (Ordonnance visant la régionalisation du bail d'habitation / Ordonnantie houdende de regionalisering van de woninghuurovereenkomst). The date of its entry into force must still be fixed by the Brussels Government. The target date appears to be 1 January 2018.

The ordinance aims at ending a practice that the Government regards as abusive. Arbitration clauses frequently appear in standard lease contracts sponsored by landlords associations. Tenants do not understand what they sign up to, lose access to the Justice of the Peace and are exposed to extra costs.

The legislative history makes it clear that arbitration clauses contained in current leases will become invalid as soon as the new ordinance enters into force. It is silent as to the effect on arbitration proceedings that will be pending at that time.

The Council of State objected that the Brussels Region lacks competence to legislate on the subject. Parliament overruled the objection, on the grounds that the matter is ancillary to housing policy. The question may eventually end up before the Constitutional Court.