

OTIF



ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL

Bulletin of International Carriage by Rail 1/2009, p. 12

Bundesgerichtshof (Germany), ruling of 14 February 2008

2 I ZR 183/05¹

Headnote:

The notion of contract of carriage in the sense of Article 1 CMR is autonomous and stands free of notions of national law. Forwarding against a fixed price falls under application of CMR without express provision by national law.

The same would apply within the scope of application of the CIM UR, i.e. that fixed price forwarder is equivalent to the carrier and is subject to the law on the carriage of freight. See also the case law (Austria) published in Bulletin 1/2003 (p. 10-12). In the ruling by the German Bundesgerichtshof, there are references to case law of other CMR contracting states concerning the term “contract of carriage” within the meaning of Article 1, para. 1 of CMR. According to this case law, legal practice in England and Belgium considers the own account “forwarder” who is not accountable as the “carrier”, while the view in France is that the “commissionnaire

(Translation)

The full text of this guideline ruling has been published on the website
www.bundesgerichtshof.de

¹ lower courts: Landgericht Köln, Oberlandesgericht Köln