The Voice of European Railways

CER POSITION PAPER

Metal Theft

May 2014

COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES - COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE - GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN

CER aisbl Avenue des Arts, 53 B-1000 Bruxelles Tel: +32 2 213 08 70 Fax: +32 2 512 52 31 contact@cer.be www.cer.be

Content

ABOUT CER 3

1. BACKGROUND 4

2. EXECUTIVE SUMMARY 6

3. METAL THEFT AS A CROSS-BORDER AND ORGANISED CRIME 8

4. EXISTING MEASURES AGAINST METAL THEFT - RESPONSE OF THE RAILWAY SECTOR 9

5. PROPOSALS FOR ACTION AT MEMBER STATES' AS WELL AS EUROPEAN LEVEL 10

A. EU MEASURES AGAINST METAL THEFT 10

B. DEFINITION OF CRIMINAL OFFENCES AND SANCTIONS 13

C. STATISTICS ON METAL THEFT 14

D. OTHER MEASURES – AWARENESS RAISING, BETTER COMMUNICATION AND SHARING OF INTELLIGENCE 14

E. SECURITY RESEARCH 15

ABOUT CER

The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 members - European railway undertakings, their national associations as well as infrastructure companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises. CER members represent about 61% of the rail network length, more than 84% of the rail freight business and about 99% of rail passenger operations in EU, EFTA and EU accession countries. For more information, see www.cer.be or follow us via Twitter at @CER_railways

1. BACKGROUND

With regard to the Treaty on European Union, 'the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to […] the prevention and combating of crime.' (Article 3.2) Although national security remains the sole responsibility of each Member State (Article 4.2), and the competence of the European Union regarding police cooperation is very limited, "Justice and Home affairs" has been one of the fastest growing policy areas of the European Union for the last two decades.

In the European Union, (metal theft) crime is seen as a threat to the internal security of the European countries. Not only does it undermine the European values, in particularly the rule of law, but it also affects negatively the national economies, e.g. due to too high costs for rail maintenance services, and the disturbance of public transport service which affects negatively the economy. Furthermore, it may have a direct impact on the safety of passengers and other persons involved in or around railway services.

Due to the fact that the organised metal theft criminal groups as well as metal theft opportunists attack not only railways but also other services of general interest, such as energy networks and telecommunications, CER is of the opinion, that international coordination and cooperation between and amongst security authorities, police forces, transport operators, as well as other market operators, play a key role in ensuring security within the European Union and should be intensified and extended at the EU level.

The already existing European practices, strategies and approaches shall be acknowledged though. CER, together with other railway transport members' associations, inter alia, COLPOFER and UIC, calls upon the European Commission and the Council to:

- deploy the framework of the Stockholm Programme, the EU Internal Security Strategy, the Europol's EU Serious and Organised Crime Threat Assessment (SOCTA 2013), as well as the EU's priorities for the fight against serious and organised crime between 2014 and 2017 (which includes as a priority 'to combat organised property crime committed by Mobile Organised Crime Groups'),
- recognise the importance of the measures which Member States have taken to contribute to the fight against organised crime,
- focus, above all, on metal theft crime in upcoming years,
- continue organising LANDSEC meetings where the Commission, Member States as well as stakeholders can exchange best practices and share information,
- acknowledge the activities and outcomes of the Pol-PRIMETT project funded by DG HOME

There is a need that the Member States, the EU institutions, the sectors affected by metal theft, as well as international bodies get more involved and work more closely together to tackle metal theft. The only effective response to the problem is the combined implementation of legislative, financial, technical and administrative measures in the context of a close collaboration among public and private sectors. Only a combination of all the measures proposed (legislative, operational and voluntary ones) will help to tackle the problem effectively in the future as the

introduction of only some of them always leads to the danger that criminality is simply shifting to another field as criminals always find a way.

2. EXECUTIVE SUMMARY

- Metal theft, considered as an organised cross-border crime in Europe, has a significant impact on the daily lives of people, affects negatively national economies, and is seen as a threat to the internal security of the European countries;

- Metal theft has resulted not only in disruption of rail services, business losses, customers' dissatisfaction, but also in deaths of offenders and injuries of persons involved in or around railway services;

- The railway sector has been trying to find the best solution on how to protect their businesses and their customers from metal theft. While putting different technical measures in place and establishing cooperation mechanisms with law enforcements and other sectors, these measures were not effective enough to ensure proper protection of their businesses and customers;

- In order to mitigate metal theft, there is therefore a need that the Member States, the EU institutions, and private sector get more involved. Thus international coordination and cooperation between and amongst security authorities, police forces, transport operators, as well as other market operators, that play a key role in ensuring security within the European Union, should be intensified and extended at the EU level;

- The already existing European as well as national practices, strategies and approaches shall be acknowledged and deployed. The following strategies, such as European Council's Stockholm Programme (2010), Europol's EU Serious and Organised Crime Threat Assessment (2013), and Council's Priorities for the fight against serious and organised crime between 2014 and 2017 (2013), shall be implemented accordingly and contribute to the fight against metal theft crime;

- The European Commission should make sure that the Council Decision 2008/841/JHA on the fight against organised crime, defining the maximum term of imprisonment of at least between two and five years for criminal offence, as regards a criminal organisation, is correctly applied by Member States. In addition to this, the Member States together with the Commission should consider establishing common definitions and sanctions for crime on services of general interest, such as metal theft crime, taking into account the real impact of the crime when punishing the offenders;

- In most of the cases, the stolen metal is being sold to scrap metal dealers or being illegally shipped abroad in containers. Hence, the European Commission should also make sure that the Directive 2008/98/EC on waste as well as the Regulation (EC) No 1013/2006 on shipments of waste are properly implemented by the Member States. Furthermore, the Member States should take appropriate actions ensuring that all scrap metal dealers are established in accordance with the existing legislation. In addition to this, the European Commission should introduce new measures enforcing the Member States to introduce licencing system for scrap metal business, register of scrap metal dealer facilities,

identity checks of suppliers and retailers, record keeping as well as police registers dedicated to scrap metal trade;

- Last but not least, research on combating metal theft should play a crucial role within the framework of the new Horizon 2020 Programme. This shall be driven by the needs of the railway sector (as well as other sectors affected by metal theft) rather than by suppliers of security systems.

3. METAL THEFT AS A CROSS-BORDER AND ORGANISED CRIME

Metal theft, considered as an organised cross-border crime in Europe, also acknowledged by Europol in the SOCTA report from 2013 as one of the major crime threats facing the EU, has had a significant impact on the daily lives of people and railway businesses in Europe, and has already been a problem for decades. The number of metal theft incidents has been increasing across Europe, also due to the growing global metal demand and consequently increasing prices of metals.[1] The thieves target any kind of metals – copper, aluminium, lead, brass, zinc, nickel, platinum, and bronze. Besides the financial attractiveness, other factors that, unfortunately, contribute to the rise of metal thefts, are the availability of and accessibility to metals, the simplicity of metal sales, the low risks and penalties, the difficult real-time detection and tracking of malicious acts and cable cutting for instance on rail networks, problems for law enforcement in obtaining evidence as soon as the metals enter the recycling process, but also the poverty, unemployment and low incomes.

In the railway sector, the criminals are targeting particularly the signalling and power cables, but also rail fastening systems, rails, (elements from) bridges as well as elements from wagons and braking **systems, which are essentials for the functioning and the efficiency of the rail services.** As such, the whole railway sector is affected by metal theft. **Metal thefts, occurring every single day across Europe, lead to delay or even cancelling of thousands of trains, and affect millions of passengers and freight customers.**

Organised metal theft criminal groups as well as metal theft opportunists attack not only railways but also energy networks, telecommunications, construction sites, churches, war and grave memorials, heritage sites and even scrap metal dealers (when stealing already once sold metals). The thieves steal anything that is made from metals, e.g. street signs, manhole covers, or shopping trolleys. **This leads to a physical, economic, social, psychological, spiritual, historical and political loss.** Furthermore, as a consequence of metal theft, other innocent victims such as persons involved, e.g. the staff of railway companies, emergency services, law enforcement agencies but also passengers can face a higher risk, when being in the vicinity of the crime area. I**t can also lead to death or injury** of offenders that are stealing high-voltage cables. **Especially in the railway, energy and telecommunication sector, metal theft results in disruption of vital infrastructure services, which can cause widespread cascade effect.**

Unless a respond is given to the threat, the European citizens and businesses will keep on being affected by metal theft. Furthermore, the economic cost of metal theft crime is very high (e.g. according to the UK Government: "Metal theft costs the UK economy around £220 million a year") thus the inaction is just not an option.

Due to the cross border and cross sectorial dimension of metal theft crime it is becoming much harder to tackle this problem only on national level, thus **a common action at EU as well as international level is needed**.

[1] The major target of metal theft is copper. According to the World Bank Commodity Price Data the annual price of copper rose from approximately 1560 US dollar per tonne in 2002 to approximately 8000 in 2012. Currently the price of copper has been decreasing to 6650 US dollar per tonne in the (1Q 2014).

4. EXISTING MEASURES AGAINST METAL THEFT - RESPONSE OF THE RAILWAY SECTOR

In the railway sector, it is the responsibility of each Member State as well as of the railway sector itself to put in place measures in order to protect their vital infrastructures that are essential to the functioning of the society and economy. In order to make one of the most environment-friendly modes of transport, rail, even more sustainable and attractive, the aim is to increase the overall quality of the services offered. **The rail passengers and freight customers expect the railway services to be functional, reliable, safe and secure. Metal theft crime undermines the ability of the railway to be a sustainable transport mode**, the development of railway businesses, and the trust of passengers and freight customers in railway services.

An adequate level of protection of railways must therefore be ensured in order to limit the occurrence of metal theft. Rail transport, as an open access transport mode, cannot be protected entirely from all potential threats. The rail networks are too large to fence or guard and any immense and fundamental modification of the rail system would involve enormous structural and financial requirements. **All CER members are facing the problem of metal theft and try to find the best solution on how to protect their businesses and their customers**, e.g. replacing copper for other less expensive metals where possible (note: copper is a good conductor of electricity thus irreplaceable from railway power cables), protecting metals as much as possible, installing CCTV systems, perimeter violation detection system, access control system, intrusion detection system, fire alarm system, cable marking technology, and anti-theft alarm system for copper cables, but also taking appropriate protection measures before, during and after transport of (scrap) metals via rail, and many others. Though, this is obviously not enough and due to the wide extent of the European railway networks, the costs of the above mentioned measures are enormous, not always affordable and, last but not least, always need to be adapted to the current risks thus cannot be seen as the only solution.

In addition to the above mentioned technical measures, some of **the CER members also already established some forms of cooperation with other counterparts, e.g. through already existing international bodies such as UIC, UITP, Colpofer, but also with the police forces, customs agencies, energy and telecommunication companies, as well as scrap metal dealers especially at the national level. This strengthened cooperation between different levels and sectors** in order to cope with illegal circulation of metals, and to investigate as well as prevent metal theft crimes, shows complementary and global approach. Also these measures need to be seen as a part of the solution.

Therefore, there is **a need that the Member States, the EU institutions, the sectors affected by metal theft as well as security solution providers and International bodies get more involved**, work more closely together, and play an active role in tackling metal theft, thus ensuring the continuity of vital infrastructure services, such as railway services, on which the European citizens are dependent. The only effective response to the problem is the combined implementation of legislative, financial, technical and administrative measures in the context of a close collaboration among public and private sectors nationally, and requires communication, coordination, and cooperation at EU as well as international level among all interested parties.

5. PROPOSALS FOR ACTION AT MEMBER STATES' AS WELL AS EUROPEAN LEVEL

A. EU MEASURES AGAINST METAL THEFT

There are number of areas where the EU institutions and agencies as well as different stakeholders could work better together to reduce metal theft in the future. **The already existing European practices, strategies and approaches shall be acknowledged and deployed**.

The **European Council's Stockholm Programme** (2010/c 115/01) defined strategic guidelines for legislative and operational planning within the area of freedom, security and justice in accordance with Article 68 TFEU in the years 2010 to 2014 and focused on the interests and needs of citizens of the Union and other persons for whom the Union has a responsibility. Moreover, the Stockholm Programme invited the Council, the Commission, the European Parliament, and the Member States to draw up and implement policies to improve measures for the protection of citizens and for the protection, security preparedness and resilience of critical infrastructure.

Furthermore, it is one of the objectives of the **Commission's Internal Security Strategy** to focus on the disruption of international crime networks. Europol acknowledged in the **EU Serious and Organised Crime Threat Assessment (SOCTA 2013)** metal theft as organised property crime, as type of highly-mobile criminal activity that is significantly affecting all EU Member States, and that will remain an important feature of the serious criminal landscape in Europe. Also the **Council** included the combat against organised property crime committed by Mobile Organised Crime Groups as one of its **priorities for the fight against serious and organised crime between 2014 and 2017**. COSI (Standing Committee on Operational Cooperation on Internal Security), a Council body, shall coordinate, support, monitor and evaluate the implementation of the Plans for each priority, and ensure consistency in the implementation of operational actions necessary to strengthen internal security within the Union.

CER therefore invites Member States, EU Institutions and agencies to implement these strategies accordingly, and to contribute to the fight against metal theft crime.

Besides the fact that the operational activities (e.g. pursuing and prosecuting of perpetrators) remain within the responsibility of each Member State, the EU institutions have the possibility to establish police cooperation involving all the different levels of government bodies, especially the law enforcements, and assist the Member States in fighting organised crime more effectively through prevention, detection and investigation of criminal offences.

The fight against metal theft criminal networks, having an international nature, requires a high level of coordinated action of law enforcement and jurisdictions that have the ability to work effectively across borders. The fight against this criminal phenomenon will involve systematic exchange of information, widespread use of the International (WCO) and Union agencies (Europol, Eurojust, and OLAF) and investigative tools, and establishment of joint operations involving police, customs, border guards and judicial authorities in different Member States, where necessary. The Commission should support such operations.

In addition, the **European Police Chiefs Convention published by Europol in 2011**, advocates a more creative approach to combating criminality that looks beyond traditional law enforcement investigations, prosecutions and surveillance methods, and **encompasses a wide range of administrative and preventative measures, including serious crime prevention** orders already in use in some Member States. Also the Stockholm Programme mentions that 'the best way to reduce the level of crime is to take effective measures to prevent them from ever occurring, **including promoting social inclusion**, by using a multidisciplinary approach which also includes taking administrative measures and promoting **cooperation between administrative authorities, citizens of the Union** that have similar experiences and are affected in similar ways by crime and related insecurity in their everyday lives.'

In most of the cases, the stolen metal is then being sold to scrap metal dealers, where the offenders receive their reward (usually in cash). The financial attractiveness and the simplicity of metal sales is the driving force behind the metal theft crime. Thus, the scrap metal dealers need to be also seen as a part of the solution in tackling metal theft as they are also affected by metal theft. A closer cooperation between services of general interest, such as railway, and the recycling sector needs to be further strengthened, e.g. as it is the case within the Pol-PRIMETT II project funded by DG HOME.

Furthermore, it is important to use a multi-sectorial approach and that Member States authorise only those scrap metal dealers that are running their businesses according to the national rules, thus can be seen as trusted and reliable partners. The national authorities should have the ability to enforce existing laws and prevent this from happening.

CER therefore invites **the European Commission to make sure that the Directive 2008/98/EC on waste is properly implemented by the Member States**. According to this directive, the Member States shall take appropriate measures to encourage in the first instance the prevention or reduction of waste production and its harmfulness. Furthermore, the Member States 'shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste' (Article 36). Above all, the Member States shall draw up a waste management plan relating in particular to the type, quantity and origin of waste to be recovered or disposed of; general technical requirements; any special arrangements for particular wastes; suitable disposal sites or installations. (Article 28) As for the Article 23, **any establishment or undertaking which carries out the recovery operations, such as recycling/reclamation of metals and metal compounds, shall obtain a permit**.

Hence, CER invites the Member States to take actions ensuring that all scrap metal dealers are established in accordance with the existing European as well as national legal framework and operating to national standards.

CER suggests to the European Commission to introduce new measures, either amending the existing Directive 2008/98/EC on waste or proposing new European legislation, **enforcing the Member States to introduce**:

- Licencing obligation for scrap metal business
- A register of scrap metal dealer facilities

- Identity check of the retailer/supplier (ID or Passport, address,…)
- Record keeping
- Police registers dedicated to scrap metal trade

This is to note that the measures need to be introduced European wide in order to have a positive impact. These measures would not only help the law enforcement authorities to investigate metal theft crime, but also would lead to a much harder sell of metals for thieves, thus it could lead to a decrease of metal thefts.

Other additional measures implemented on a voluntary basis could also be suggested:

- Awareness training of the scrap metal dealers' employees to recognise dubious materials
- The creation of a list of metals whose sale is regulated or illegal / a list of metals permitted for sale
- The creation of an alert system to warn the scrap metal dealers when a theft occurred

There is a need to improve the transparency and visibility of the financial exchanges/transactions. Some EU Member States have already imposed/implemented cash-less payment system in order to mitigate the metal theft crime. Nevertheless, due to the abolition of the internal border within the Schengen area, the introduction of such a system only in some of the Schengen countries will not prevent the thieves from stealing the metals in these countries as long as they can easily cross the border and sell the stolen material in another country. In order to achieve an optimised result of this measure, a European-wide approach would be a solution.

In addition, as an increasing percentage of metal is shipped abroad in containers, ports and customs should work closely together in order to avoid this illegal export. CER recalls the **Regulation (EC) No 1013/2006 on shipments of waste** as well as the proposal for a Regulation amending this regulation published in July 2013 (COM(2013) 516 final), and invites **the European Commission to make sure that this Regulation is correctly applied by Member Statas**.

Emphasising what was mentioned in the previous chapter, some of the CER members already established some form of cooperation with the police forces, energy and telecommunication companies, as well as with scrap metal dealers in order to strengthen cooperation between each other, to cope with illegal circulation of metals, and to investigate as well as prevent metal theft crimes. These measures have been implemented mainly at the national, but also bilaterally with its counterparts, and have already showed that this cooperation offers lots of benefits. Only when establishing a cooperation and coordinated action between the railway sector, the scrap metal dealers and law enforcement authorities at the EU level we can be successful in tackling the metal theft efficiently.

In addition to these, CER also invites the Directorate-General for Home Affairs of the European Commission to organise another Meeting of the Informal network on the administrative approach to prevent and fight organised crime and to also invite the relevant stakeholders to attend this meeting. In the past these meetings took place as a part of the Expert Group 'Forum on organised crime prevention', within which the Commission together with the Member States also discussed the metal theft issue.

B. DEFINITION OF CRIMINAL OFFENCES AND SANCTIONS

Regarding the judicial measures, the **Council Decision 2008/841/JHA on the fight against organised crime**, defined a 'criminal organisation' as

"a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit" (Article 1.1)

The Decision further specifies that each Member State shall take the necessary measures to ensure that the offence, understood as 'a conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities', is punishable by a maximum term of imprisonment of at least between two and five years (Articles 2-3).

The European Commission should make sure that the Council Decision 2008/841/JHA is correctly applied by Member Statas.

Furthermore, the Stockholm Programme mentions that 'criminal behaviour in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis should become the object of common definitions of criminal offences and common minimum levels of maximum sanctions.'

As the metal theft is a very serious and organised crime affecting all EU Member States, CER therefore invites the Member States together with the Commission to consider establishing common definitions and sanctions for crime on services essential to the maintenance of vital societal functions, such as metal theft crime which affects, above all, the railway, energy and telecommunication sectors. In some Member States the offenders, in form of organised but also opportunistic thieves, are punished only based on the value of the stolen metals or on the basis of the infraction of simple theft. The real impact it has on the (rail) businesses, their customers and the whole society – like costs of replacement, maintenance services, service disruption (train delays or cancelations), customer reimbursement for the disruption, customer dissatisfaction, damage of company's reputation and loss of revenue is not taken into account. Furthermore, the disruption of services of general interest can cause widespread cascade effects, e.g. a missing ground cable can provoke heating, even fire, and can disable strategic facilities such as the substations. These all aspects should be considered when giving penalties to the offenders. **The foreseen penalties need to be proportional to the considerable seriousness of the offences.**

Criminal sanctions can have a particular deterrent effect, as potential perpetrators can be expected to make a certain calculation of risks before deciding to engage in such criminal activities. The introduction of minimum sanctions is consequently considered necessary to ensure

that an effective deterrence all over Europe can be achieved. The fear of receiving a severer legal punishment could prevent some of the offenders to commit this kind of crime.

C. STATISTICS ON METAL THEFT

Nowadays, there are no comparable, adequate and reliable data at the Member States' level that would reflect the actual loss for (rail) businesses and the European citizens due to metal theft and due to attempted thefts. Even though it is almost impossible to measure the actual loss, in order to at least estimate the qualitative and quantitative effects of the disruption or destruction of affected sectors as a cause of metal theft, **the Commission should provide a support and financial assistance to the Member States to establish national situational picture of metal theft on a voluntary basis,** without creating additional administrative burden.

The scope of the metal theft issue needs to be better understood. A common European data collection could enable to compare the trends in metal theft crime at the EU level. Such data would not only show the actual extent of metal theft in each Member State, but also whether an implementation of certain measures has a positive impact on tackling it. The different legal and criminal justice systems and traditions across the EU should be taken into account.

D. OTHER MEASURES – AWARENESS RAISING, BETTER COMMUNICATION AND SHARING OF INTELLIGENCE

CER welcomes a stronger connection of the different flows of information between all security authorities at EU level. It is agreed and recognised that metal theft is a global and immense problem affecting the EU railways, and an effort has to be made in order to gather all involved within the same objective, the railway metal theft mitigation. This would enable better and wider awareness of emerging or changing threats, faster response times and more efficient use of synergies and coordinated security measures, generating added value at the EU level for improving transport security. In order to better use all the available resources it is important to avoid duplications of work.

The need for multilateral communication and cooperation on European level within the context of metal theft mitigation is also reflected in the activity of railway bodies which address security issues and current threat scenarios, such as the CER, EIM, UITP being responsible for the political activities and communication with the EU institutions and agencies, UIC, through its Metal Theft WG, responsible for the strategic and technical activities, as well as COLPOFER, through its Metal Theft Watch Unit, responsible for the operational activities.

But not only this, also the poverty, unemployment and low incomes, unfortunately, contribute to the rise of metal thefts. The Member States as well as the Commission should also take this aspect of the metal theft issue into account, and focus in their prevention activities on better education, social inclusion, fighting with unemployment, etc. Without inclusion of these elements the fight against metal theft crime will not be successful

E. SECURITY RESEARCH

CER supports any initiative for further research in the field of metal theft. The security research should be initiated according to the need of the railway sector and not according to the suggestions of the manufacturers or suppliers of new technologies. Security industry participation is relevant, but cannot be the sole determinant of needs. Research on new marking technologies and on perpetrators' modus operandi is also a promising field. Therefore research on combating metal theft should play a crucial role within the framework of the new Horizon 2020 Programme.

Disclaimer

Community of European Railway and Infrastructure Companies (CER) AISBL

Avenue des Arts 53
B-1000 Brussels
Belgium

Tel +32 2 213 08 70
Fax +32 2 512 52 31
contact@cer.be

This CER document is for public information.
Although every effort is made to ensure the accuracy of the information in this document, CER cannot be held responsible for any information from external sources, technical inaccuracies, typographical errors or other errors herein. Information and links may have changed without notice.