6. The labour inspection system and labour law reform in France

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6.1 INTRODUCTION

The French labour inspection system operates in a complex political, economic, legal and social environment characterized by budgetary restrictions,¹ restructured labour relations, growing social demand – particularly since the crisis in 2008 and the current COVID-19 crisis – and a recent comprehensive reform of the labour laws.

Generally speaking, the French inspection system takes a broad-based approach that is, a priori, reflected in its organization and operations and allows inspection officials, labour inspectors and labour auditors to analyse all matters falling within their mandate. As Kapp et al. (2013: 23) emphasize, ‘this model has the advantage of identifying existing links between, for example, terms and conditions of employment, occupational hazards and the status of social dialogue in enterprises’.

French law naturally relies on this comprehensive, ambitious approach of the labour inspection system in specifying that inspection officials

Are responsible for ensuring application of the provisions of the Labour Code and other labour-related legal provisions, as well as the stipulations of labour conventions and collective agreements ... In conjunction with officers and agents of the judicial police, they are also responsible for reporting violations of these provisions and stipulations.²

The State labour inspectorate has many obligations (neutrality, impartiality, confidentiality of complaints, etc.), which, since April 2017, have been officially set out in an Ethics Code.³ It also has specific prerogatives (independence, the right to enter and visit enterprises without prior authorization, etc.), which are guaranteed at the international level by various International Labour Organization (ILO) conventions.

With regard to implementation, these officials’ activities fall into two key areas which are – or at least are perceived to be – to some extent different in

nature; moreover, the coordination of these activities is an ongoing source of discussion and disagreement as to their required functions and mandates. First, inspection officials must ensure implementation of the labour policies established at the national and local levels in the knowledge that the priorities and objectives of these policies also apply to them. Second, they respond to direct requests made by employees – and sometimes by employers – and meet these requests in light of their own independence and their ability to determine the legal consequences of their monitoring. There are still internal conflicts, particularly between Ministry of Labour trade unions and the labour administration, regarding the relative importance that these two areas of work should have in the monitoring activities of inspection officials. Actually, these priorities established at the national level are often perceived as undermining the autonomy of inspectors to decide what actions to be taken. It thus creates a tension between the collective and national approach and the independence which characterizes labour inspection.

The objective of this chapter is to examine the ‘Strong Ministry’ reform launched in 2012 and implemented in January 2015. The chapter discusses the most problematic measures associated with the reorganization of the French labour inspection system and their relationship with earlier reforms. We will see that while the most recent reform led to more collaborative working relationships within the inspection system, difficulties remain. We also discuss the labour inspection reform in the larger context of labour law reforms that have served to make labour inspectors’ tasks more difficult in certain respects, thereby limiting the impact of the ‘Strong Ministry’ reform.

The recent changes in the labour inspection system, the genesis of which can be traced to the adoption of the Labour Inspectorate Modernization and Development Plan⁴ in 2006, were carried out in several stages. The merging of the various inspection services in 2008, followed in 2009 by the establishment of Regional Directorates of Enterprises, Competition, Consumer Affairs, Labour and Employment (*Direccte*), supplemented this modernization plan. Thus, Vercamer (2011: 18), speaking of the turbulent period from 2007 to 2011, stresses that ‘during these five years, the labour inspectorate underwent the highest number of organizational reforms in its history’.

The most recent changes, and particularly the Strong Ministry reform, are extending and confirming this ongoing adaptation and in-depth reorganization of France’s labour inspection system. Moreover, these reforms, both current and past, are part of the broader process of disseminating the primary concepts and tools of New Public Management at the political and institutional levels. Initially, this wide-ranging movement aimed at reform of the operating procedures of public administrative science, launched in the early 1980s, led to the development and implementation of critical assessments of the administration with the primary goal of reducing operating costs (Bèzes, 2009). It then relied

on dissemination of an economic and managerial approach based on efficiency improvements, empowerment of managers, transparency, evaluation and accountability with the ultimate goal of institutionalizing a specific type of normalization of public action based on the development of a governance model in which performance- and results-based management play a key role (Forest and Verchère, 2012).

In France, the public authorities were late in adopting the principles of New Public Management owing, among other things, to the unique historic role played by the French State. However, this increased focus on the managerial aspects of public action ultimately prevailed, beginning in the early 2000s with the adoption and subsequent implementation of the Public Finance Legislation Organization Act. This budgetary reform, grounded in a comprehensive reorganization of public finance, was a defining moment in the transition from a means-based to a results-based approach. The Public Action 2022 programme, launched by the Macron Government on 13 October 2017, is fully in line with this approach and has the stated goal of decreasing public spending by 3 per cent of gross domestic product (GDP) by 2022.⁵

Methodologically, our analysis is based on a variety of sources that range from theoretical and empirical studies to the analysis of institutional and trade union documents. This research was enriched by qualitative meetings with members of the General Labour Directorate and local Ministry of Labour officials. Also consulted were some of the trade unions that represent labour inspection officials. Most of them were opposed to all or some of the measures associated with the reform of the labour inspection system.-

6.2 THE 2014 ‘STRONG MINISTRY OF LABOUR’ REFORM

Officially launched in September 2012, the initial recommendation to establish a strong Ministry of Labour, originally championed by the then Minister of Labour, Employment, Training and Social Dialogue, Michel Sapin, was made in July 2012. The Minister reported ‘discontent on the part of the officials of a Ministry that has lost its bearings and its values’, ‘discontent on the part of a labour inspectorate that no longer feels supported by its Ministry and its managers’, and ‘a breakdown in social dialogue’.

This marked the beginning of more than 18 months of dialogue with regional managers, trade unions and inspection officials, during which the planned reform took shape. A Government Instruction published in October 2013 provided an outline of this reform: ‘the inspection system ... must work

more collectively in order to work more effectively'.⁶ To that end, three major changes were planned for the labour inspection system and its officials:

- a comprehensive geographical and managerial reorganization of the labour inspection system;
- an Employment Transformation Plan (PTE) that provides for the reclassification of labour auditors as labour inspectors;
- expansion and strengthening of inspection officials' power to impose penalties.

6.2.1 Geographical and Managerial Reorganization of the Labour Inspection System

This reorganization, adopted by decree on 20 March 2014 and implemented throughout Metropolitan France since 1 January 2015,⁷ has had an impact on the entire organizational and managerial structure of the labour inspection system at the national and subnational levels.

Before describing in greater detail the changes resulting from this reform, we shall briefly explain the structure of France's labour inspection system. Since 2006, the General Labour Directorate, which operates under the Ministry of Labour, has been the central authority responsible for the planning, implementation and coordination of labour policy throughout the country. At the regional level, these inspections are conducted in the 13 directorates (*Direccte*) that comprise Metropolitan France.⁸ Each of these directorates is divided into three sections, which are responsible for implementing the public policies related to their respective areas of expertise. For example, the Enterprises, Employment and Economy section (section 3E) is responsible for monitoring economic development and employment policy; the Competition, Consumer Affairs, Fraud Control and Metrology section (section C) is mandated to monitor the proper functioning of markets, trade relations between enterprises, consumer protection and metrology; and the Labour Section (section T) ensures the application of policies set at the national and regional levels and is responsible for inspections related to the labour laws. At the department level, there are 'territorial units' that include labour inspection sections, which, under the reform, have been divided into monitoring units. Since 2015, these units have constituted the operational arm through which inspections are conducted in enterprises.

The first major change took place at the local level and entailed reorganization of the 'local' inspection services, which had been modified by the creation of the monitoring units. Prior to the Strong Ministry reform, the local inspection system had been divided into inspection sections, generally at the sub-departmental level. They normally included (i) one labour inspector, who

was the section chief; (ii) one or two labour auditors; and (iii) one or two secretarial posts. The monitoring units, which replaced this previous geographical and functional division, now include 8–12 inspection officials – inspectors or auditors – on the understanding that, under the aforementioned PTE, they will ultimately employ only inspectors. Under the Strong Ministry reform, the monitoring unit is the new administrative and organizational entity under which inspection officials work. These officials have, however, retained all of their powers in their own territories, still referred to as ‘sections’. These ‘new’ inspection sections within the monitoring units currently comprise just one inspection official and are therefore referred to as ‘single sections’. Each monitoring unit includes 8–12 of these ‘single-official geographical sections’ and the secretarial posts are now occupied by ‘monitoring assistants’ who are shared by the entire unit. With regard to operational management, the establishment of monitoring units was accompanied by the creation of a new supervisory post, that of Monitoring Unit Chief, with a mandate to ‘increase the effectiveness of the labour inspection system by implementing, steering and supporting the unit’s inspection and support staff’. Clearly, the new responsibilities assigned to these officials are largely those previously assigned to the labour inspectors who functioned as section chiefs.

At the regional level, there have been two changes. First, each region has been assigned a regional support and monitoring unit on illegal employment (URACTI); the regional directorates also have the option to establish sectoral or thematic monitoring units (on agriculture, road transport or construction). The URACTI in Metropolitan France have a staff of 3–12 officials, depending on the size of the region in question, and focus exclusively on the issue of illegal employment. They provide officials with legal and methodological support so that they can better respond to the complexity and diversity of the relevant issues (cascade subcontracting, secondment fraud, etc.). Second, there is now the option to set up specific networks to handle complex risks (primarily those associated with asbestos and chemicals). These networks, the composition of which is left to the discretion of the regional directorates, may also reflect local factors such as other specific risks. As of March 2018, there were 13 URACTI and 226 monitoring units, which included 2,104 inspection sections and 21 specialist units (Ministère du Travail, 2019).

The Strong Ministry reform has also led to organizational changes at the national level, including (since 1 January 2015) the establishment of a National Oversight, Support and Monitoring Group (GNVAC) under the General Labour Directorate. This body was established in order to ‘provide support for operations that require specific expertise, support for services, specific monitoring or coordination of monitoring’.⁹ Currently comprising about ten inspection officials, the GNVAC is responsible for complex operations aimed at combating fraud in the secondment of workers employed by international

service providers. This national group may also support local operations led by the URACTI. Lastly, 20 cases, of which 15 concern secondment fraud, are being or have been handled jointly by the GNVAC and the local inspection services (General Labour Directorate, 2017).

6.2.2 Implementation of an Employment Transformation Plan (PTE)

In 2012 Michel Sapin set out a Transformation Plan for labour inspection in the following terms:

My vision of the labour inspection system that we are going to build cooperatively is that of a monitoring profession for which the distinction between auditors responsible for small enterprises and inspectors in charge of large ones is no longer relevant. The qualifications and skills required for the performance of the duties of both auditors and inspectors under section T of the *Direccte* will be quite similar; therefore, it will no longer make sense for each of them to have a separate status. The section of tomorrow will rely on a single corps: that of inspectors.¹⁰

The Plan, which is unprecedented in breadth, is based on the progressive reclassification of labour auditors as labour inspectors with the ultimate goal of a single inspection body.¹¹ This progressive elimination of the corps of auditors, which is still underway, entails a ‘restricted examination’ through which auditors can be promoted to the post of inspector after six months of training. A decree issued in June 2013 established the procedures for recruitment to the corps of inspectors; the goal is to reclassify 1,540 labour auditors at the rate of 200–250 promotions per year during the period 2013–19.¹² This plan has not been fully completed to date.

6.2.3 Establishment of New Powers to Impose Penalties

The Ordinance of 7 April 2016 on monitoring the application of labour law comprehensively renewed and modernized the penalty mechanism by strengthening the courses of action available to inspection staff;¹³ they have been given new legal tools, including administrative fines and plea bargaining, in order to increase the effectiveness of the labour laws.

The introduction of administrative fines was prompted to a great extent by the high number of cases opened by inspection officials that were subsequently closed. In practice, this limited their scope and discouraged their use. It was partially in order to address this ineffectiveness that the labour inspection system was empowered to impose fines for several clearly defined violations. The introduction of these administrative fines as an alternative to criminal prosecution represents a genuine innovation for France. In addition, on the recommendation of inspection officials, regional directors can now impose

finances for violations that were previously classified as criminal offences (e.g. failure to respect the maximum length of the working day, rest periods or the minimum wage).

With regard to plea bargaining, this tool, as part of a negotiated penalty, is often described as an ‘instrument for modernizing the criminal legal response’ (Tomi, 2017). Like fines, it meets the need for speed, effectiveness, and thus enforcement of the rule of law by supplementing and strengthening existing mechanisms such as waiving a hearing on a guilty plea and out-of-court settlements. The scope of such settlements includes all infractions and misdemeanors subject to less than one year’s imprisonment and concerning, among other things, employment contracts, rules of procedure and occupational health and safety.

6.3 AN ASSESSMENT OF THE STRONG MINISTRY REFORM

Owing to its breadth and its relatively recent introduction, it is difficult to provide an accurate assessment of this reform. However, several lines of inquiry and subjects for reflection may be suggested. It is also essential to stress that this reorganization of the labour inspection system has met with strong opposition, both at the political level and within the system itself; the majority of the most representative trade unions have objected to several aspects of the Strong Ministry reform.¹⁴

6.3.1 The Geographical and Managerial Reorganization of the Labour Inspection System

As Struillou (2014) recalls, ‘as early as the 1980s, a labour inspection crisis was identified. The goal of the reform is to respond, at last, to this situation.’¹⁵ While such a reorganization seemed necessary, its outcome to date has been mixed (Ville et al., 2016) and, above all, uneven between regions (Cour des comptes, 2020).

While the new division into monitoring units has unquestionably had a positive impact, laying the foundation for more collective and coordinated work under unit chiefs who have been empowered to promote a managerial dynamic characterized by implementation and support, it has also met with sometimes strong opposition from some officials and the unions that represent them. There are several reasons for this opposition, some stemming from the very nature of the reform and others from previous, and thus more structural, problems.

First, the Strong Ministry reform entailed the creation of an additional level of authority as described above. This change is sometimes seen as a desire to

discipline inspection officials since – at least in the eyes of the trade unions opposed to the reform – the primary responsibility of the new unit chiefs is to apply labour policies set at the highest level and to ensure that the structure of monitoring activities closely reflects national priorities in that regard.¹⁶

The objections raised reflect a fear that this planning and quantification of inspections, already considered burdensome, would be further increased owing to the new level of authority, partially at the expense of the social demand from stakeholders (primarily employees) and of the independence and freedom of action of inspection officials.¹⁷

The National Labour Inspection Council (CNIT), which issued two statements on the Strong Ministry reform proposal in 2013, also called for caution on these matters. It stated, for example, that, the central and local authorities ensure, particularly through coordination, that the application of policies set at the national and local levels does not – owing, among other things, to their number or to the time limits imposed – conflict with implementation of the labour laws that empower officials to take decisions and make choices. They ensure the complementarity and balance of these mandates with an official's own initiative so that, such collective action does not, by design or in practice, hinder implementation of the labour laws in other ways.¹⁸

However, the law of 10 August 2018 on the State in the Service of Confidential Society (ESSOC) further reinforced the role of the central authority in guiding the activity of public agents.

Since 2019, the inspectorate has been under an obligation to implement 300,000 interventions a year, while labour inspectors are expected to spend two days per week within enterprises. Half of the interventions by the inspectorate should focus on four national priorities (illegal work, detached foreign workers, equal treatment at work and occupational health and safety). The proportion of controls relating to national and/or local priorities significantly increased in 2018 from 35 per cent to 50 per cent.¹⁹ Yet, despite the fact that the proportion of controls that can be implemented at the discretion of agents is decreasing and that monitoring of their actions has increased, there has been no formal and structured dialogue within the labour inspection system about the objectives to be attained. The absence of dialogue has contributed to a lack of adherence to the national policy and even an opposition to the hierarchy within a larger context of recurrent opposition to reforms. Moreover, the increased number of control priorities, both at the national and local levels, has had a harmful effect on the clarity and coherence of objectives and actions.

Striking a new balance between national and local objectives around more qualitative and better targeted objectives and indicators could enhance effectiveness. Similarly, implementation of a truly collaborative relationship between agents and the central authority might lead inspectors and heads of unit to identify more strongly with national inspection priorities. Furthermore,

the engagement of inspectors might improve were they to be directly involved in the identification of problems to be dealt with and appropriate measures.

Another issue is the significant decrease in the total number of inspections conducted by inspection officials. For example, they conducted 369,111 inspections in 2010 – five years prior to full implementation of the reform – but only 295,890 in 2019, a decrease of about 25 per cent over the period in question.²⁰ Thus, it appears that the reform was a partial failure, at least with regard to the purely quantitative aspect of inspections. There are several possible explanations for this relative failure.

First, in accordance with the objectives of the Strong Ministry reform, the labour inspection system and its effectiveness now rely largely on the unit chiefs. As emphasized by Ville et al. (2016), this new level of administration ‘is a work in progress and has significant weaknesses’; these middle-management positions require specific and often complex skills that entail a more participatory form of management designed to involve inspection officials more closely in setting goals and finding ways to achieve the priorities of national labour policies. However, it is clear that some managers lack some of these skills, sometimes for want of appropriate training, and therefore make it difficult to recruit staff. As a consequence, some unit chief posts have not been filled, a fact that also affects the quality of inspections. The Court of Audit (*Cour des comptes*, 2020: 29) has also emphasized that more than a half of control units function in line with the reform’s objectives, but that the remainder are struggling to fully carry out their duties. While the creation of the post of head of unit was a key element of the reforms, few have received adequate support (although a programme is apparently being developed).

Second, computerized entry of data on operations remains the subject of regular calls for a boycott by some trade unions, which has been heeded by inspection officials and resulted in decreased manual data entry. Refusing to report their activities is one way for officials to express their opposition to the various reforms of the labour inspection system (Szarlej-Ligner, 2016), including the Strong Ministry reform.²¹ Moreover, the information system is also inadequate: the application Wiki ‘T, introduced in 2016 to collect data, remains too complex and slow, negatively affecting the reliability of data entered by agents. A replacement system is urgently needed. In response, a new project – ‘SUIT’ – will be launched in 2021. It is intended to address most of the current deficiencies by enabling easier entry of data.

Finally, these disruptions are taking place in a climate of increasingly scarce budgetary resources, which has resulted in a staff shortage throughout the labour inspection system and had a clear impact on its operations. First, the number of inspection officials decreases from 2,462 to 2,347 between 2014, when the ‘Strong Ministry’ reform was launched, and 2019 (a decrease of 4.7

per cent in five years) (Cour des comptes, 2020). These numbers include 210 heads of units, representing nearly 9 per cent of the total.

However, while unit chiefs are sometimes able to conduct inspections in enterprises, their primary task is to lead and guide their units, a fact that limits the number of enterprise visits that they conduct. At the same time, the number of administrative assistant posts has also fallen significantly, from 829 in 2014 to 735 in 2018, a decrease of almost 12 per cent over a four-year period, although the scope and complexity of the labour inspection system's activities has changed greatly. Lastly, the number of public information officials has fallen by 11.5 per cent: from 512 in 2014 to 453 in 2018. These reductions in the workforce are decried by the Ministry's trade unions at regular intervals and are said to be, at least in part, the cause of the loss of efficacy that has been clearly observed in some units.²²

6.3.2 The Employment Transformation Plan and the 'New Powers' of Inspection Officials

Although the Transformation Plan was welcomed by the inspection officials and their trade unions when it was adopted in 2013, negotiations with some of the Ministry of Labour's trade unions are still underway. The current problem is that the corps of labour auditors includes both inspection officials and auditors who carry out other tasks 'outside the inspection section', primarily related to employment issues handled by the *Direccte* at the regional level. At the end of 2013, this corps comprised 2,990 officials, of whom 1,320 were responsible for monitoring enterprises (Forissier, 2014); 1,670 were working 'outside the section'. It should be borne in mind that the PTE calls for the reclassification of only 1,540 auditors as inspectors.²³ Therefore, some of the auditors could not benefit from this upgrade – accompanied, among other things, by a rise in salary – by 2019. This issue is at the heart of the demands made by all of the Ministry of Labour's trade unions, which are calling repeatedly for the upgrading of all auditors, whether or not they conduct inspections.

It is also to be noted that the public information function has been largely assumed by the labour auditors, who were promoted to the position of labour inspectors. In consequence, this information role is currently being partially undertaken by control assistants, who do not necessarily have a sufficient legal background and whose numbers are also declining, making the assignments of labour inspectors even heavier (Capus and Taille-Polian, 2019).

Finally, even though the control agents have at their disposal a large selection of tools of coercion, thanks to the introduction of administrative fines and criminal prosecution, it seems that the use of these tools remains very limited (Cour des comptes, 2020: 67). In 2018, only 1,751 fines were imposed, which is much less compared to other measures taken in the same year: 170,412

observation letters, 4,836 formal notices and 4,994 protocols submitted to prosecutors. While the administrative sanctions were supposed to significantly shorten the need for investigation, this weak usage limits the effectiveness of labour law. Moreover, there are important regional disparities in their usage. Better support for newly recruited agents, regular exchange of experiences and good practice, especially at the local level, would certainly encourage a wider use of these devices. The heads of units have a decisive role to play in relation to support and coordination.

6.3.3 The Strong Ministry Reform and the Reorganization of Labour Law

While the changes in the labour inspection system are numerous, and while it has proved difficult to implement them and to gain the support of inspection officials, they are taking place at a time when the labour laws are being significantly modified, further complicating the problems mentioned above. This reform of the Labour Code raises many issues: the goal is to simultaneously streamline and simplify legislation that is perceived as overly complex and unintelligible, address concerns regarding the financial impact of termination, limit the uncertainties surrounding the appeals and renew social dialogue.²⁴

This comprehensive reorganization of the labour laws began with the adoption of the Act on Labour, the Modernization of Social Dialogue and the Safeguarding of Career Paths (the Labour Act) on 8 August 2016. Generally speaking, the Act seeks to ease the framework and requirements for collective bargaining by, among other things, giving enterprise agreements priority over sectoral agreements in matters relating to working time and leave periods. The institutionalization of this new approach has, moreover, met with strong opposition at both the political and the social levels.

This desire for more flexible regulations is part of a relatively old trend towards the decentralization of social dialogue that, to a great extent, responds to the current demands of employers' organizations. It entails a new coordination of standards; the proposed structure would comprise three levels: 'public policy' legislation, rules established in conventions and collective agreements and 'supplementary provisions'. The legislation includes public policy rules to which no exceptions can be made ('absolute' public policy) and those that allow for exceptions, but only in order to make them more favourable to employees ('social' public policy). Negotiated changes, and therefore conventional rules, may be carried out at the local level; supplementary legal rules are binding only in the absence of conventional rules.²⁵ While the role of the sector has been strengthened to some extent, there has been a clear increase in the autonomy of collective bargaining. This allows the social partners to free themselves from the legislation while respecting public policies that are, in

reality, minimal and gives priority to bargaining at the enterprise level. This decentralization of bargaining in order to promote social dialogue is, however, a source of concern, particularly in light of the counterweight that employees' representatives can provide (Paulin, 2017) and the low rate of unionization in France.²⁶

The reform of the labour laws through an Ordinance issued by the Macron Government in September 2017 is fully consistent with the Labour Act and, moreover, expands its scope.²⁷ Since then, enterprises have genuinely been the primary forum for collective bargaining on issues that go far beyond working and leave time.²⁸

There are now three negotiating blocs within the regulations modified by the Labour Act. The first gives priority to sectoral agreements in 13 areas (minimum wage; probationary employment; etc.). Enterprise agreements are only applicable where they provide employees with 'guarantees that are at least equivalent'. The second bloc creates the option of giving sectoral agreements priority in four areas (prevention of occupational risks; hiring and continuing employment of people with disabilities; trade union rights and recognition of trade union experience; and bonuses for dangerous or unhealthy work). The social partners can choose to lock in these provisions at the sectoral level or to allow enterprise agreements to waive them while preserving at least equivalent guarantees for employees. The third bloc gives enterprise agreements, even where less favourable, priority in all other areas of labour relations (leave time, bonuses, organization of working time, etc.).

These major changes in labour regulations, introduced simultaneously with other regulations within the labour inspection system, have had an impact on the tasks assigned to inspection officials and, in fact, have made it more difficult for them to fulfil their monitoring responsibilities. In addition to the implementation of these new rules, the increase in the number of agreements reached at the local level, including in small enterprises, may make their monitoring tasks more complex and difficult at a time of increasingly scarce budgetary resources and declining staff numbers, inevitably worsening the organizational and managerial problems discussed above.²⁹ Furthermore, while departmental observatories have been established in order to analyse and support social dialogue and bargaining, particularly by advising enterprises with fewer than 50 employees, there may also be increased recourse to the labour inspection system's public information services at a time when the number of officials who perform this important task is continually decreasing.

6.4 CONCLUSION

Based on a comprehensive geographical and managerial reorganization of the inspection system, the Strong Ministry reform launched in 2015 has resulted

in genuine achievements, such as the implementation of a Plan that converted ‘auditor’ posts to those of ‘inspectors’ and the introduction of new power to impose penalties. Nevertheless, it appears to have failed – at least in part – to promote more collective and streamlined working practices in the labour inspection system. As emphasized by Capus and Taillé-Polian (2019: 7), this reform has faced difficulties relating to vacant posts, insufficient training, a lack of identification of labour inspectors with their role and unreliable statistics. In addition, there has been a reduction in staff autonomy, failure on the part of some heads of unit to provide support to their staff and, finally, labour policies which are insufficiently decentralized and with objectives that are too quantitative and elaborated without consultation with labour inspectors.

It appears that the current government may have recognized this relative failure. The government’s Public Action 2022 programme, adopted in 2017 calls for, among other things, ‘better organization of the labour inspectorate’.³⁰ However, this future reorganization will be carried out in a legal system that has been overhauled. The recent comprehensive changes in the labour laws have made the work of inspection officials harder and more complex, and all this in the context of cuts in public expenses causing very serious constraints on the Ministry of Labour’s work. The difficulties have become more acute, given the impact of the COVID-19 crisis.

NOTES

1. As at the end of the second quarter of 2020, the public debt amounted to 99 per cent of gross domestic product (INSEE, 2020), which is largely above the criteria imposed by the Treaty of Maastricht and which justifies the cuts in public spending undertaken by the Macron administration since 2017.
2. Article L8112-1 of the Labour Code.
3. Decree No. 2017-541 of 12 April 2017 (the State Labour Inspectorate Ethics Code).
4. Also noteworthy is the fact that this Plan provided for a significant increase in the number of labour inspectors and labour auditors; 632 posts were created during the period 2007–10. It also led to the establishment of the General Labour Directorate, implementation of a national labour policy, increased planning of inspections and quantified evaluation of activities.
5. This goal has implications at the social level as seen from the ‘yellow vests’ populist protest movement, launched in October 2018; its members decried not only the decline in purchasing power and rise in the fuel tax, but also the elimination of local public services.
6. Government Instruction of 29 October 2013 on implementation of the Strong Ministry project.
7. Decree No. 2014-359 of 20 March 2014 on the organization of the labour inspection system.
8. There are also five *Directte* (the Employment, Competition, Consumer Affairs, Labour and Employment Directorates) in the overseas territories.

9. Decree No. 2014-359 of 20 March 2014 on the organization of the labour inspection system.
10. Statement by Michel Sapin, Minister of Labour, Employment, Occupational Training and Social Dialogue, delivered to the CTM on 14 December 2012. Available at: http://www.sud-travail-affaires-sociales.org/IMG/pdf/Discours_CT_M_14dec.pdf, consulted on 18 January 2019.
11. This transformation of the auditors' posts into those of inspectors is a response to long-standing demands, bearing in mind that auditors have received less training than inspectors and therefore occupy lower-level posts.
12. Decree No. 2013-511 of 18 June 2013 establishing special procedures for the recruitment of labour inspectors.
13. In reality, this Ordinance gives the labour administration far broader powers to impose financial penalties, a procedure that was actually introduced in 2014 through Act No. 2014-790 of 10 July 2014 in an effort to combat unfair social competition, including in the case of employers who are unaware of their obligations regarding the secondment of employees. The Act of 6 August 2015 on growth, employment and equal economic opportunity (the 'Macron Act') also facilitated the use of such financial penalties.
14. The regulations on which this reform is based have been appealed on the grounds of abuse of power and the CGT-TEFP, SNUTEFE-FSU and SUD Labour and Social Affairs have brought complaints before the administrative court (Cortot, 2016). These appeals – which demonstrate the strong opposition of the labour inspection system's most representative trade unions – were, however, rejected by the Council of State in late December 2015.
15. While realistic, this statement is not new. It echoes comments made 20 years previously at a National Institute for Labour, Employment and Occupational Training (INTEFP) seminar held in October 1992. Moreover, this seminar resulted in the publication of an article entitled 'L'inspection du travail dans un monde en mutation: les défis auxquels elle est confrontée', published in the December 1992 issue of the journal *Droit Ouvrier*.
16. Because labour inspectors no longer supervise their sections, the post of chief of service is also being abolished. Thus, the chain of authority has been streamlined and the transmission of information has, a priori, been improved.
17. A letter entitled 'Who wants to kill off the labour inspectorate?', published in the newspaper *Le Monde*, on 3 February 2014 and signed by four of the Ministry's unions, the CGT-TEFP, FO-TEFP, SNUTEFE-FSU and SUD Labour and Social Affairs made some of these arguments. Our interviews also confirmed these fears.
18. *Initial opinion of the National Labour Inspection Council on the proposal, 'For a Stronger Ministry', 3 October 2013*. Available (in French) at: http://travail-emploi.gouv.fr/IMG/pdf/Avis_du_CNIT.pdf, consulted on 1 October 2020.
19. For example, 'un agent de contrôle en région Ile-de-France devait *in fine* satisfaire 19 objectifs thématiques différents en 2019' (Cour des comptes, 2020: 59).
20. See Ministère du Travail, de l'Emploi et de la Santé (2011) et Cour des comptes (2020).
21. With regard to these boycotts, Ville et al. (2016: 375) note that 'this movement, which was subsequently expanded to include a boycott of performance evaluation discussions, continues to undermine the monitoring of labour inspection activities and is preventing France from fully meeting its obligation to report to the ILO on its activity in this area'. The General Labour Directorate has stated that it is endeavouring to correct 'the abuses caused by the anti-hierarchical, and indeed

- non-hierarchical, culture that has prevailed within the inspectorate for over 30 years' (p. 381).
22. This decline in effectiveness can be observed, for example, in the diminution of their interventions at the enterprise level and thus the reduction in the number of inspections.
 23. It is likely that the number of auditors who do not carry out monitoring tasks is lower at the time of writing than it was in 2013, given the ageing workforce and the number of staff who have since retired.
 24. This reform is based on several reports prepared not only by legal experts, but also by economists (see, among others, Combrexelle (2015) and Barthélémy and Cette (2010)).
 25. For example, the first eight hours of overtime must be paid at a higher rate (absolute public policy) that can be freely negotiated by agreement provided that it is not less than 10 per cent (social public policy); in the absence of such an agreement, a 25 per cent increase is applicable pursuant to the Labour Code.
 26. In 2013, only 11 per cent of retail employees stated that they were members of a trade union although almost half of them said that they had never or had only rarely been involved in their union's activities (Dares, 2017). For example, Breda (2014) shows that trade union delegates, including those employed by small enterprises, are specifically required to bargain at the enterprise level and earn 10 per cent less than other employees; this 'wage penalty' is doubtless explained by the fact that such work is not highly valued.
 27. Five Ordinances were adopted on 22 September 2017 and were later supplemented by a 'sweeping' Ordinance on 20 December 2017. These six Ordinances were definitively ratified by the Act of 20 March 2018.
 28. While this significant reform makes enterprise agreements an important tool in collective bargaining, it also revolutionizes the labour laws by, among other things, capping the amount of the fines imposed by the labour courts, streamlining enterprise referendums, merging bodies that represent employees and overturning collective agreements. With regard to the establishment of a scale of indemnities, several labour courts have already struck down a scale of the damages and interest that can be paid to an employee on the grounds that it violated international law (the ILO Termination of Employment Convention, 1982 (No. 158) and the European Social Charter).
 29. An evaluation committee was created in 2017 in order to assess the impact of Macron's decrees, even if this reform is too recent to fully evaluate its impact. It seems that number of enterprise-level agreements increased considerably. In 2019, some 65,800 agreements were registered while during the period 2015–17 their average number was 25,000 per year. Even if these first data show a certain dynamism initiated by the reform, they should be treated with caution as the act of registration has been digitalized and the data after 2018 became difficult to compare (Committee of evaluation of labour decrees, July 2019).
 30. See <https://www.modernisation.gouv.fr/action-publique-2022/plans-de-transformation/les-plans-de-transformation-ministeriels>, consulted on 12 October 2020.

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