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**The 2006 French Immigration  
and Integration Law: Europeanisation  
or Nicolas Sarkozy's  
Presidential Keystone?**

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**Abstract:** The 2006 French Immigration and Integration Law restructured existing French legislation concerning immigrants and their integration. It promotes a strategy consisting of 'selective immigration', mandatory integration for long-term residents and 'co-development'. Which factors have contributed to this policy change? This working paper examines the substance of the law and the context through which it has been presented and debated. It finds that domestic factors are largely responsible for the introduction and passage of the law. In particular, within the context of the upcoming 2007 French Presidential election, this paper highlights the role that Nicolas Sarkozy has played in the recent policy change. This preference for the national approach implies that the EU will continue to encounter difficulties in its attempts to construct a common EU migration policy.

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## Introduction

On 17 May 2006, the French National Assembly adopted the Immigration and Integration Law (*Projet de Loi relatif à l'immigration et à l'intégration*) (Assemblée Nationale 2006c). Exactly a month later, the French Senate signalled its approval by ratifying the law. The law restructured existing French legislation concerning immigrants and the integration of migrants by promoting the strategy of 'selective immigration' (*immigration choisie*), making it mandatory that potential long-term residents integrate, and incorporating the concept of 'co-development' into its immigration regime. According to Nicolas Sarkozy, the Interior Minister who had proposed the law, the rationale for revising the policy was to ensure that France can '...better regulate immigration, fight against the embezzlement of the immigration procedure, promote selective immigration and ensure successful integration in the interest of both France and the countries of origin...' (our translation, Assemblée Nationale 2006c).

For the first time since 1974, two separate laws concerning migration have been proposed and adopted within a single parliamentary term. The first, Regulation of 26 November 2003 on immigration and asylum (Journal Officiel 2003), also known as the 'Sarkozy Law', represented the beginning of a thorough reform of French immigration policy. The 2006 French Immigration and Integration Law, commonly referred to as 'Sarkozy Law 2', continues this process. Such developments are unprecedented in France. When Sarkozy presented the case for migration policy change in 2003, he voiced very similar concerns that he would again make when he outlined the case for the 2006 French Immigration and Integration Law (Sénat 2003). One of the key concerns that Sarkozy raised in both instances of policy change is that France should not become the weakest link (*le maillon faible*) in Europe that would enable illegal migrants to overrun her territory. The adoption of these two pieces of migration legislation appears to suggest that since 2002 the government has made immigration a top priority.

This working paper examines the substance of the 2006 French Immigration and Integration Law and the context through which it was presented and debated. It considers the following questions: what are the key components of the 2006 French Immigration and Integration Law? Which factors have led to its adoption? Is the passage of the law a case of

Europeanisation? Or are domestic factors responsible for the policy change? What implications, if any, would developments in France have on the ongoing negotiations for a common EU immigration policy?

It is structured as follows. In the first section, the key components of the 2006 French Immigration and Integration Law and what these changes intend to introduce into the current French immigration regime are discussed. Next, the paper examines the factors that could have been responsible for the proposal and adoption of the law. Two EU directives (long-term residents and free movement of persons) are considered first because of their prominent inclusion in the 2006 French Immigration and Integration Law. Although EU policy developments remain important in understanding certain aspects of the law, the assumed need to transpose these two EU directives by no means exerted sufficient pressure to bring about the recent policy change.

The next section analyses domestic developments to see if national pressures have led to the adoption of the law. Within the national context, one finds that the 2006 French Immigration and Integration Law specifically addresses a set of particular domestic concerns regarding immigrants and their integration. Yet one also notes that these issues are longstanding. Hence, the subsequent section examines the conditions under which the current French policy change has been made possible. For this the working paper considers the context in which the law has been debated and the rising interest in immigration issues within the French voting public. It sees that Sarkozy plays a decisive role in gathering support for the law from legislators and voters across the political spectrum. Even though Sarkozy advances several important measures concerning migration and integration, this paper finds that his ambition to win the upcoming 2007 French Presidential election might have provided the impetus which led to the law's adoption.

The final section sums up the main findings and also considers the implications the recent French migration policy change will have on EU level developments.

## The 2006 French Immigration and Integration Law

The Immigration and Integration Law adopted on 17 May 2006 contains six titles, of which a substantial title (Title II) concerns 'private and family life'. The law proposes an immigration model with three distinct components: (1) 'selective immigration' (*immigration choisie*), (2) mandatory integration for potential long-term residents, and (3) 'co-development'.

The Immigration and Integration Law advocates the strategy of *immigration choisie* through which 'qualified' migrants would be eligible to enter France (articles 1 to 22). The concept of *immigration choisie* refers to the aspect of the migrants' being 'chosen', through which the French Republic also signals its acceptance of the migrant. As Sarkozy said in his presentation of the law, 'Before a migrant arrives in France, either to study or join his family, the Republic has to agree to welcome him' (our translation, Assemblée Nationale 2006b). By advocating *immigration choisie*, Sarkozy's approach has been criticised as utilitarian because it qualifies migrants in terms of numbers and the specific usage they would serve to better the French economic situation (Assemblée Nationale 2006c; Libération 2006b). In his own defence, Sarkozy argued that *immigration choisie* does not necessarily advocate an elitist system through which only the most highly skilled will be welcome in France; its focus is rather on raising the public's awareness of the positive contribution that migrants have made (Assemblée Nationale 2006b).

To put *immigration choisie* into practice, the National Assembly proposed and ratified the introduction of a 'competences and talents card' (*carte competences et talents*), possession of which would authorise migrants satisfying the requirements to work in any occupation of their choice. This card is renewable after the initial period of three years, and it is meant to facilitate the reception of new migrants whose 'talents' would be an asset for the development and *rayonnement* of France. Sarkozy has made it clear in his presentation of the law that this *carte competences et talents* will not be issued to migrants whose skills are in critical need, such as doctors and nurses, in areas such as sub-Saharan Africa (Assemblée Nationale 2006b). This position is very much in line with the recent European Commission Communication titled 'EU Strategy for Action on the Crisis in Human Resources for Health in Developing Countries' (European Commission 2005a). In addition, a temporary residence permit upholding 'private and family life' would allow the families of those who have gained

residence in France through *immigration choisie* to join them. It is unclear at this point whether or not all those entering France through *immigration choisie* would possess this card, or if this card is only one of the channels through which migrants can enter France under the *immigration choisie* regime.

In line with the principle promoted by *immigration choisie*, the 2006 Immigration and Integration Law also redefined the rules for family reunification (articles 23 to 32). It stipulates that migrants who are third-country nationals (TCNs) that would like to have their families join them, once these migrants are in France, can only do so after having remained in France for at least eighteen months (versus the previous one year requirement).<sup>1</sup> This period of eighteen months is considered crucial by the French government for the preparation needed for family reunification (such as obtaining decent housing and showing proof of having sufficient means...etc.). For married couples, of whom one partner is French and the other a TCN, the spouse of the French national must obtain a separate visa for stays longer than three months prior to his/her entry into France (article 27). For the spouse of the French national to obtain a permanent residence permit the couple must be married for at least three years (in comparison to the previous requirement of two years). Furthermore, the 2006 French Immigration and Integration Law raised the requirement from two to four years for those migrants who already possessed permanent residence and who wish to apply for French citizenship (see article 26).

The second component of the 2006 Immigration and Integration Law is an incremental plan of mandatory integration for migrants who would like to settle permanently in France (article 4). This plan is a process through which a migrant demonstrates his 'willingness' to comply with the requirements of acquiring permanent residence. In practice this process will start before the migrant arrives in France. For example, with few exceptions that have not yet been elaborated, any potential migrant will now need to obtain a long-stay visa before a temporary residence permit will be given. This long-stay visa can only be acquired outside of France. If a migrant is interested in permanently remaining in the country, he/she must sign a contract of reception and integration (*contrat d'accueil et d'intégration*). Hence, before a

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<sup>1</sup> Migrants who are nationals of EU countries, Switzerland and the European Economic Area (EEA) are not considered as 'third-country nationals' because the rules concerning TCNs in the 2006 French Immigration and Integration Law, and other EU legislation, do not apply to them.

migrant can be given the right of permanent residence, he needs to demonstrate that he is competent in French and also that he is committed to upholding French laws and values, again currently undefined (article 31).

The third aspect of the 2006 French Immigration and Integration Law concerns the strategy of 'co-development', through which France seeks to achieve a 'true partnership' with countries of origin in migration management. 'Co-development' is a concept that is being defined by practitioners and its usage in policy terms remains variable (Chou 2006). It was initially used to refer only to development issues. Co-development's linkage with migration was made in the 1980s when the French used the term within its framework of 'assisted return programmes' (Chaloff 2005). Here the aspect of 'true partnership' with countries of origin can be seen as 'coercive' in that the French government is obliging them to 'take back' their nationals. What is given in exchange for a third country's cooperation is usually unspecified. This hardly conjures up an image of development assistance that such 'true partnership' implies to be. However, co-development as operationalised by the 2006 French Immigration and Integration Law appears to strike a balance for a true partnership with third countries. The law aims to contribute to the education of elites from developing countries, but with a view towards eventual return. As Sarkozy puts it, 'young foreign graduate students who obtain their masters degree in France will be able to enhance their education with a first professional experience in France before their return to their country of origin' (our translation, Assemblée Nationale 2006b).

In order to oversee the implementation of the strategies and provisions outlined by the 2006 Law, it also recommended the creation of a National Council of Immigration and Integration that would bring together public representatives and members of civil society. The mandate of this National Council would be to establish impartial statistics concerning immigration, monitor the enforcement of the immigration and integration policies, and recommend improvement measures to the government.

## **Explaining the 2006 French Immigration and Integration Law**

### *A Case of Europeanisation?*

In addition to promoting several strategies concerning migration, the 2006 French Immigration and Integration Law also transposed two EU directives. The first is the directive concerning the rights of TCNs after they have obtained the status of 'long-term residents', which came into effect on 23 January 2006 (Official Journal 2004a). The second is the directive concerning free movement of persons, which had a transposition deadline of 30 April 2006 (Official Journal 2004b). Title I, Chapter IV of the 2006 French Immigration and Integration Law specifically transposed the directive concerning the free movement of EU citizens and their family members, while Chapter V implemented the Council directive concerning long-term residents (Sénat 2006). Such prominent inclusion of these two EU directives suggests evidence of Europeanisation, a process through which domestic level developments can be directly attributed to what are occurring at the EU level. This section considers the question: are EU factors truly responsible for the French immigration policy change?

The objectives of the long-term residents' directive are to codify a set of definitions and procedural guarantees concerning the status of long-term residence in a EU member state and the rights of TCNs after they have obtained that status. One of these rights is to travel to and reside in, for work purposes, another EU member state other than the one that has granted him/her the status of long-term resident. By definition, the following TCNs, who might be permitted to reside in a member state, are excluded from the provisions of this directive: (a) those who are studying or undergoing vocational training; (b) refugees and those given temporary or subsidiary protection; (c) asylum seekers; (d) au pairs, seasonal workers or service providers; and (e) diplomats (article 3). Paragraphs 18 to 23 of the preamble establish the argument that long-term residents in EU member states should be allowed to 'contribute to the effective attainment of an internal market' and Chapter III outlines the conditions under which they would be allowed to do so. The preamble embodies the 'spirit' behind the legislation but does not bind EU member states to what is being said. Speaking with an official from a Nordic member state's permanent representation to the EU, it was implied that during negotiations the articles that member states cannot



agree with are usually removed or moved up to the preamble. This shifting up to the preamble is an act of compromise between member states and the Commission representative present at the negotiations, because it is deemed to be very important by some and not by others.

It is important to note that the directive concerning long-term residents does not confer any automatic right of free movement to TCNs who have obtained that status, which would have implied an encroachment on the rights of member states to determine to whom they would give rights to. The reason why member states maintain this right is because this EU legislation is a directive, which means that member states have the right to interpret how to best implement the effects as outlined in the directive. This simple observation may lead one to question the likelihood that France needed to change its immigration policy so as to be in line with new EU directives, unless, of course, the substance of the directive were different from the legislation already in place in France, thereby necessitating a change in current policies.

The substance of EU's long-term residents' directive is broadly in line with the French immigration legislation prior to its recent revision. The requirements that a long-term resident TCN must abide by in order to reside in another EU member state include the following. First, the TCNs must demonstrate that they have sufficient means to support themselves and any dependent family members. Second, TCNs must also show that they have adequate sickness insurance covering possible risks that they and their dependents may incur while residing in the host member state. Third, if a member state has set integration requirements for its long-term residents, any EU long-term residents wishing to reside in that member state must satisfy those integration requirements 'in accordance with national law' (article 15). In addition, the following documentation must also be provided: evidence of appropriate accommodation; if engaged as an employed person, work contract or similar documents; and if enrolled in an educational or vocational training programme, evidence of registration with the accredited institution. Given that most of these requirements are already conditions for those applying to visit the Schengen area for stays *less than three months*, let alone those of residence, it is very likely that France did not need to revise its immigration policy to comply with an EU legislation it already has in place.

Long-term residents who are TCNs may enjoy equal treatment as nationals of the host EU member state in the following areas: access to employment; working and employment conditions (such as dismissal and remuneration); educational and vocational training; recognition of qualifications; social security, social assistance and protection; tax benefits; access to public goods; freedom of association and affiliation; and internal movement (see article 11). However, the directive also allows EU member states to curtail these rights in the following instances: when that EU member state is the place of ordinary residence of the long-term resident; when access to employment is restricted to its own national or EU and EEA citizens; when the host EU member state has special national provisions regulating access to employment; and when the long-term resident attempts to access core social benefits concerning assistance and protection. Member states are also permitted to request proof of language proficiency in the event that the long-term resident seeks to acquire education and vocational training.

Family members of the long-term residents are also allowed to reside in the host member state with the long-term resident (article 16). In these instances, the family members must provide the following documentation when applying to remain in the host member state: (a) their own long-term residence permit; (b) evidence indicating that they are family members of the long-term residents in the first EU member state; and (c) evidence suggesting that they have sufficient resources (financial and health) to cover their stay in the host member state so as to not become a burden on the host country.

If one takes into consideration article 24 of the long-term residence directive, which contains a 'report and rendez-vous clause' stipulating that the Commission must report to the Parliament and the Council no later than 23 January 2011 concerning progress made and difficulties encountered in implementing this directive, the suggestion that France needed to revise its immigration policy so as to be in line with EU directives is questionable.

Specifically, the Commission has also been asked to propose necessary amendments, giving priority to Chapter III of this directive (in addition to articles 4, 5, 9 and 11). This rendez-vous clause is evidence of a compromise between the Commission and certain EU member states that are keen to push through this directive and those that are not ready to move beyond national legislation. Put simply, it provides the possibility of revising the strategy as outlined in the long-term residence directive. This rendez-vous clause goes in some ways to

challenge the likelihood that France needed to amend its immigration policy *now* so as to transpose this EU directive. As a British Foreign Office official, who previously represented the UK in EU migration policy negotiations, indicated in the interview, 'If Sarkozy is really reacting to adopted EU measures; he is very late [in doing so]'.

The free movement of persons' directive sought to consolidate all previous legislation concerning the free movement of persons, and, because of this, it has already been partially implemented by the 2003 'Sarkozy Law' and Décret n° 2005-1332 (Le Conseil d'Etat 2005). Therefore, its impact on the recent French migration policy developments is not directly evident. The directive simplified the multiple categories of people who previously enjoyed the right of free movement from 'workers, students and self-employed...etc.' to 'EU citizens'. All EU citizens will now be able to exercise free movement if they satisfy the following requirements. For stays less than three months in another member state, EU citizens would only need to possess a valid identity document (article 6). For stays over three months, EU citizens would only need to register at the population register at the place of residence and obtain a certificate showing that they have done so (article 7). In the latter case, EU citizens no longer have to obtain a residence permit. In addition, all EU citizens wishing to exercise the right of free movement and residence must possess sufficient funds and comprehensive sickness insurance so as to not become a burden on the host EU member state. After five years of continuous residence, EU citizens will have the right to permanently reside in the host member state (article 16). Continuous residence allows for temporary absences of no more than six months a year, or a maximum of 12 consecutive months within five years. In the latter case, only important reasons such as illness or pregnancies are acceptable for such absences. The right of permanent residence can be lost if the EU citizen do not reside in the host member state for periods exceeding two consecutive years.

The free movement of persons' directive is also applicable to the family members of EU citizens. The definition of a 'family member' will now cover the following persons (article 2): (a) the spouse; (b) the partner of the EU citizen if the host member state recognises such a union as equivalent to marriage; (c) the direct descendants of the EU citizen or those of his/her partner; and (d) the dependent direct relatives of the EU citizen or those of his/her partner. In addition, the directive also permits 'any other family members' not included in

the previous four categories to move and reside with the Union citizen if they are dependent or if their health requires the personal care of the Union citizen. The free movement of persons' directive also grants the same rights to those partners 'with whom the Union citizen has a durable relationship' (article 3(2b)).

The free movement of persons' directive also extends similar rights of free movement and residence to EU citizens' family members regardless of their nationality. EU citizens' family members can also enter and reside in another member state with a valid identity document. However, if the family members' country of origin is included in the list contained within Council Regulation (EC) No 539/2001 (see Annex I, Official Journal 2001), or if the host member state's national law requires it, they will also need to obtain an entry visa in addition to showing a valid identity document. For family members who are TCNs, they must obtain a 'Residence card of a family member of a Union citizen' (article 10). The host member state must issue residence cards no less than 6-months from the day of their application; family members are not obliged to apply for a residence card within the initial three months of their stay. The residence card will be valid for five years. After five years of continuous residence, family members will also acquire permanent residence in the host member state; this card is automatically renewed every ten years (article 20(1)).

The free movement of persons' directive also provides protection for the residential rights of family members who are TCNs. In the event that the EU citizen dies, his/her family members who are TCNs should not have their residence revoked if they have remained in the host member state for at least a year. In the event in which there is a divorce, annulment of marriage or termination of registered partnership between the EU citizen and his/her partner/family members who are TCNs, the family members may retain residence in the host member state if any of the following requirements are met: (a) the marriage or registered partnership has lasted at least three years, during which one year is spent in the host member state; (b) the spouse or partner has custody of the EU citizen's child or minor child; and (c) the resulting separation is due to difficult circumstances such as domestic violence. In such situations, family members who are TCNs must show they have sufficient resources (both financial and health) so as to not become a burden on the host member state.

In spite of the limited expansion of the free movement and residential rights for both EU citizens and their family members, the free movement of persons' directive should by no means constitute a direct pressure on recent French migration policy developments because it is a consolidation of EU legislation already in place. Hence, given only the substance of the free movement of persons' directive, there is no reason to expect that the 2006 French Immigration and Integration Law to be the result of an Europeanisation of French migration policy. Furthermore, article 40(2) of this directive said that member states must communicate to the Commission on whether or not they have implemented the directive with 'a table showing how the provisions of this Directive correspond to the national provisions adopted'. Speaking with a European Commission official familiar with this directive (from Directorate General Justice, Liberty and Security), he said that France has yet to do so. In fact, its failure to communicate how it has transposed this directive by the April 2006 deadline has led the Commission to open an infringement procedure against France on 1 June 2006. If the adoption of the 2006 French Immigration and Integration Policy was indeed a response to EU pressures to transpose Council directives, it is very likely that France would have communicated its efforts to transpose the EU directives immediately after the law's adoption in the French Senate in June 2006. As of 9 August 2006, the Commission representative confirmed that France has not communicated how it has transposed the Council directive concerning the free movement of EU citizens and their families. Given this, there is reasonable evidence to suggest that the adoption of 2006 French Immigration and Integration Law was due to other factors.

In his presentation of the draft migration policies before the Senate in both 2003 and 2006, Sarkozy argued that since other EU member states (such as the Netherlands, the UK and Denmark) have recently changed their national migration policies, France must also do so because it did not want to become the 'weakest link'. Although this does not constitute evidence of Europeanisation, the likelihood that migration policy developments in other EU member states, within the context of an ever-closer Union, might have contributed to the recent French migration policy change does warrant a discussion. This scenario in which France might become *le maillon faible* is predicated on a combination of several assumptions: the notion that France is an extremely desirable destination for migrants, the reality that the Schengen *acquis* is fully functional so there are no existing internal borders hindering free movement, and the possibility that EU's external borders are somewhat porous and permit

the entry of 'undesirable' migrants. While the first assumption is based on subjective preferences of (potential) migrants that cannot be accurately assessed, the latter two are not yet an absolute reality.

The Schengen arrangement is fairly complex with participation from most of the 'old' EU member states (exception being the UK and Ireland, with Denmark having an extremely complicated 'in-but-also-out' arrangement), none of the 'new' EU countries (at least not until 2008 based on recent discussions), and some non-EU states (Iceland, Norway and Switzerland). This differentiated participation in the Schengen *acquis* indicates that there are internal borders. It is important to note that this reference to Schengen does not address the question of mobility of EU nationals who are workers. France has yet to completely lift its 'reservation' on this issue to date.<sup>2</sup> Furthermore, the existence of a porous external EU border is also debatable. Therefore, other than serving as reference points, it is inconclusive how migration policy developments in other EU member states might have directly contributed to France's recent migration policy change.

In sum, examining the substance of the two directives concerning the free movement of persons and long-term residents, there is very little evidence to suggest that the 'pressures' to transpose these two EU Council directives directly led to the proposal and adoption of the 2006 French Immigration and Integration Law. Even though the law specifically included two chapters concerning these two EU directives, it is very likely that the pressures that have driven this recent policy change are domestic in nature. In addition, even though Sarkozy cites developments in other EU countries as a reason to why France must also update its migration policies, this rationale rests on assumptions that cannot be validated. While not entirely discounting the importance of EU migration policy developments, and those in other EU member states, it is necessary to turn to domestic developments for, perhaps, insights into why the recent migration policy change was necessary.

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<sup>2</sup> Ireland, Sweden and the UK lifted their reservation on mobility of workers since 1 May 2004. On 1 May 2006, the end of first transition period, Finland, Greece, Italy, Portugal and Spain joined these three EU member states. Belgium, Denmark, Luxembourg, the Netherlands and France still require nationals from the new EU member states to apply for work permits, although the requirements are less stringent than Austria and Germany, which have decided to impose national restrictions at least until 2009.

### *Driven by Domestic Factors?*

When presenting the 2006 French Immigration and Integration Law to the National Assembly shortly after the law was deposited there on 29 March 2006, Sarkozy first provided figures to mark the 'success' of the fight against illegal immigration, the reduction in asylum applications and the stabilisation of settlement grants given to TCNs (Assemblée Nationale 2006c). This was followed immediately by a reference to France's capacity to welcome migrants and its economic needs for labour migration. Sarkozy concludes this introduction by identifying the objectives of the 2006 French Immigration and Integration Law, already listed in the introduction of this working paper. Are these objectives driven by domestic developments? If so, how do the provisions of the 2006 French Immigration and Integration Law address these issues? This section examines French migration policy developments to determine whether or not the adoption of the law is driven by domestic concerns regarding immigration and immigrant integration.

Firstly, although France welcomes the same categories of migrants from third countries (such as workers, students and those arriving on the basis of family reunification), the distribution between these different categories is skewed in favour of family reunion. In 2005, out of a total of 165,000 residence cards given in France, 82,000 (about 49.7%) were given on the basis of family reunification in comparison to only 12,500 (7.5%) for work purposes and 40,000 (24.2%) for studying (Assemblée Nationale 2006a). To provide a contrast to other EU countries, Sarkozy indicated that in 2005 a total of 35,000 TCNs entered the UK on the basis of family reunification and 66,000 in Germany (Assemblée Nationale 2006b); both figures comparatively lower than the French total. In terms of percentage, the figure for the UK represents roughly 24.1% of all settlement grants given (since the official 2005 figures are not yet published, this is calculated based on official figures published for 2004 which states that 34,905 people out of 144,550 were given settlement on family reunion basis) (Dudley et al. 2005). The figure provided by Sarkozy for Germany corresponds more with the German official figure for 2004 rather than 2005 (see Bundesamt für Migration und Flüchtlinge 2006: 70). Nevertheless, it is still difficult to establish the total number of settlement grants given by Germany since it gives permission for entry and settlement to unique categories of migrants, including, for example, ethnic German immigrants (Spätaussiedler) and Jewish immigrants from the former Soviet Union

(jüdische Zuwanderer aus der ehemaligen UdSSR) (see Bundesamt für Migration und Flüchtlinge 2006). The Federal Statistical Office Germany only provides figures of its 'foreign' population. Yet a comparison between those who enter Germany on the basis of family reunion and those for work purposes would provide some idea of the disparity between the French figures. In 2005, a total of 329,789 persons entered Germany for work purposes (this include seasonal work), while only 53,213 were given visas to enter Germany for family reunion (Bundesamt für Migration und Flüchtlinge 2006: 70-71).

This disproportionate distribution of migrants in France according to immigration categories is very likely to have contributed to the preference of *immigration choisie*. In fact, in proposing a model of *immigration choisie*, the French government aims to stop 'inflicted immigration' (*immigration subie*). The concept of *immigration subie* has been used repeatedly in the public presentation and discussion of the law, but it has never been directly and precisely defined. Although it does not explicitly refer to any particular process or channel of immigration, what *immigration subie* suggests is that it is a form of immigration that has been 'inflicted' and not 'chosen' by the French Republic. Given that the 2006 French Immigration and Integration Law specifically tightened up provisions regarding family reunification (from a more generous or 'liberal' provision to one that is less), one might suggest that one of the forms of immigration that might be currently 'unwanted' in France is one of family reunification.

Another reason for adopting a model based on *immigration choisie* is to encourage other categories of migrants to come to France. The *carte compétences et talents* mentioned earlier indicates that France would like to attract migrants whose skills are needed. This preference for skilled workers supports the strategy outlined by the European Commission in the 'Policy Plan on Legal Migration' (European Commission 2005b). In the 'Policy Plan on Legal Migration', the European Commission advocates a sectoral approach, which suggests that the EU member states share a selective immigration policy. The *Centre d'Analyse Stratégique* recently published a report (2006) assessing the case for French labour migration, and it finds that, because of its favourable demographic situation, France will not have to rely as heavily on migrant labour in comparison to its European neighbours. The report perceives labour migration as only a partial, but not an enduring, solution to the current labour market situation in France; a similar finding supported by other studies (see for example



Boswell et al. 2005). Three sets of recommendations were given by the report. First, it suggested that support should be given to certain professional categories and geographical areas. For example, French employers should have access to foreign and seasonal workforces if they are unable to meet their labour needs. Second, it indicated that the movement of workers within transnational corporations should be coordinated. And third, the report argued that the French government should support the arrival of highly skilled workers to France. In addition, the report called for the French government to also facilitate the entry of foreign students who have acquired training in fields that would fit the labour market needs in France. From the discussion above, although one cannot dismiss the possibility that the majority of EU countries might also be facing similar pressures, one can deduce that the migratory pressures through family reunification, and the desire to attract talented migrants, might have directly contributed to the proposal and adoption of the 2006 French Immigration and Integration Law.

Secondly, to explain why mandatory integration has been introduced by the 2006 French Immigration and Integration Law, it is necessary to understand national developments with regard to immigrant integration. The French model of integration is one based on *liberté, égalité et fraternité*. What this means in practice is a secularisation (*laïcité*) of public offices, and an acknowledgment that everyone is equal and, therefore, preferences should not be given towards any special groups. As a result, certain migrant groups have become marginalised through the lack of special programmes or 'positive discrimination' measures (or the American equivalent of 'affirmative action') (Haddad and Balz 2006). For example, the October and November 2005 urban (*banlieue*) riots in France testify to the failure of previous efforts to integrate migrants. What began as an alleged pursuit of two teenagers of Maghrebi descent by French police exploded into riots across France (in Paris, Lyon, Lille and other cities) after their accidental deaths.

Researchers who examined root causes of the *banlieue* riots in France propose that the following factors contributed to the failure of immigrant integration: the ghettoisation of migrants and their families in the *banlieue*; the confinement of certain migrant families to government subsidised modern apartment complexes known as *cités*; and the deeply rooted xenophobic fear of the 'immigrant' (Haddad and Balz 2006; Murray 2006; Ossman and Terrio 2006). The image suggested by these researchers is a system that institutionally

hinders the advancement of migrants. Furthermore, perhaps more importantly for this working paper, this image also indicates that these difficulties concerning immigrant integration have been ongoing for a substantial period of time. In fact, Haddad and Balz (2006: 25) credit the 19th century French policy of ‘civilising mission’ (*mission civilisatrice*) for the so-called deeply rooted ‘racism’ in France, i.e. the belief that ‘European (specifically French) culture was the most evolved in the world and should, therefore, be “inculcated” to “less civilized” peoples’.

A consequence of this so-called integration failure is the compounded impact it has on French nationals born to immigrant families or families with an immigrant background. It was some of these French nationals who were the ‘migrants’ rioting in the *banlieue*. A 2003 study conducted by the Programme for International Student Assessment (PISA) found that France, among the nine OECD countries sampled, has the lowest mean reading literacy score among pupils tested whose parents were both immigrants (Entorf and Minoiu 2004: 9). A key finding from the OECD researchers is that the language spoken at home is a more important variable than the socioeconomic status of the family: if students spoke the ‘majority language’ at home, they are likely to have better reading skills than those who do not (Entorf and Minoiu 2004: 13). The mandatory integration measure proposed by the 2006 French Immigration and Integration Law specifically addresses the issue of language fluency as a pre-requisite for permanent residence. Therefore, one can conclude that there is a direct linkage between the law and domestic developments in immigrant integration. To what extent this requirement of mandatory integration will amend the current French immigrant integration situation remains to be seen.

In introducing this requirement of mandatory integration, the 2006 French Immigration and Integration Law also removed migrants’ access to the process of automatic regularisation. It does so in a very straightforward way: it stipulates that all migrants intending on permanently settling in France must obtain a long-stay visa prior to their arrival. This requirement would exclude those who might reside on French soil without having obtained the proper documents. Regulations of 1997 and 1998 allowed migrants who have illegally resided in France for over ten years the possibility of regularising their status. The 2006 French Immigration and Integration Law would specifically abolish this ‘premium for clandestinity’ (*prime à la clandestinité*) (Assemblée Nationale 2006b). From this, one can see

that the 2006 French Immigration and Integration Law does indeed seek to 'fight against the embezzlement of the immigration procedure', one of its main objectives. The process of automatic regularisation is unique to France; other EU member states, such as the UK, Spain and Italy, have 'one-off' amnesties through which the illegal migrants can regularise their immigration status. Hence, it is very likely that this domestic development directly contributed to introducing the recent French migration policy change. Furthermore, if one adds the difficulties that France, along with other EU countries, has encountered in returning illegal migrants, the push for mandatory integration, which would make it nearly impossible to be in France without the proper documents, is within logic. Sarkozy expressed frustration concerning the difficulties in returning illegal migrants to their home countries when he presented the 2003 Sarkozy Law to the Senate. Sarkozy said that if France cannot return illegal migrants from Senegal to Senegal because it is considered to be against human rights, then it would mean that those without proper documents would have the same status as those who have (Sénat 2003).

In conclusion, this paper finds that domestic factors are the dominant pressures behind the introduction and adoption of the 2006 French Immigration and Integration Law. The disproportionate number of migrants entering France through family reunification, in comparison to both the UK and Germany, suggests a possible rationale for France wanting to 'tighten' up its family reunion rules. Add to this the common perception that migration through family reunification is *immigration subie*, and the argument strengthens. Given the low percentage of migrants entering France specifically for work purposes, the proposal for a model of *immigration choisie* through, among other routes, the possession of a *carte compétences et talents* is also in line with domestic migration pressures. The requirement of mandatory integration, through a demonstration of language fluency and the acquisition of 'Republican' ideals, perhaps resonates most directly with the failure of previous integration efforts. It has been argued by some researchers that one of the prominent root causes for the riots in October and November 2005 was the inability of migrants and their offspring to 'integrate' into the French society. This paper cannot determine the extent the proposed mandatory integration measures would address these root causes. However, it can be concluded that most of the push factors behind the introduction of the 2006 French Immigration and Integration Law are domestically rooted. Perhaps a more obvious observation is that these pressures for migration policy change have been existent for a

while; in fact, it is not something 'new'. This observation leads one to query the issue of 'timing' in the introduction and adoption of the 2006 French Immigration and Integration Law; and it is to this that we now turn.

### **The Relevance of the Electoral Context for Policy Change?**

Why was the 2006 French Immigration and Integration Law introduced very shortly after the vast revamping of the French migration regime in 2003? What were the factors that have contributed to such a development? Analysing eugenics policies in the UK and US, Hansen and King (2001: 239) find that policy change is likely to occur when these three following conditions were satisfied: (1) 'when there is a synergy between ideas and interests', (2) 'when the actors possess the requisite enthusiasm and institutional position', and (3) 'when timing contributes to a broad constellation of preferences that reinforce these ideas, rather than detracting from them'. These factors accounted for the success of eugenics policies in America and its failure in the UK. Were these conditions present in the case of the recent French migration policy change?

The 2006 French Immigration and Integration Law promoted several ideas. These ideas were presented in a dichotomous fashion, in which the preferred choice is introduced next to its contrast. For example, *immigration choisie* is seen as the better option in comparison to *immigration subie*. Alternatively, mandatory integration is necessary since voluntary integration did not work. Co-development could be both coercive or comprehensive depending on how it is interpreted and put into practice (see Chou 2006). None of these ideas were new, nor were their presentations unique. The UK has continually based its immigration regime on the principle of *immigration choisie* (and interview information indicated that Sarkozy requested the UK for their immigration approach while he was drafting the 2006 French Immigration and Integration Law), while co-development has been in circulation since the 1980s. However, these ideas have (recently) resonated with several political parties/actors and their interests.

On the political party level, the *Front National* (FN), a French far-right party, has consistently embraced issues concerning immigration, immigrants and their assumed lack of integration

as its main party platform. Although the FN has slowly evolved since its inception in 1972, immigration and the 'protection of the French national identity' have remained prominent political issues that electorates and the media identify with the FN. Given the portion of the political spectrum the FN occupies, it was never truly in an institutional position to put its ideas concerning immigration and French identity into actual policy. However, its phenomenal electoral successes since the 1990s have ensured that the topical issue of immigration is never far from the centre of 'mainstream' political agenda. In the 1995 Presidential election, the FN candidate Jean-Marie Le Pen obtained 15% in the first ballot, and in the 1997 legislature, the FN obtained 14.94% of the votes. In the 2002 Presidential election, Le Pen received 16.86%, ousting Lionel Jospin from the *Parti Socialiste* (PS), in the first ballot. In the European elections, FN nearly doubled its percentages from 5.69% in 1999 to 9.81% in 2004 (Fysh and Wolfreys 2003).

Although historically the two dominant parties, PS and the *Union pour un Mouvement Populaire* (UMP), never truly champion the immigration agenda to the extent that the FN does, this gradually is no longer the case. The PS originally endorsed a report titled 'Une Nouvelle Politique de L'Immigration' by Malek Boutih (2005), the former President of the Anti-Racist Movement in France (*SOS Racisme*) and currently working for the Socialist Party. This report called for the end of systematising family reunification, the establishment of a quota system (similar to *immigration choisie*) and the end of double citizenship and of mass regularisation of asylum seekers. After accusations were made concerning how the report echoed the FN's party platform, the PS withdrew its support. Yet the PS's original endorsement suggests that it viewed migration control as both important and necessary.

In contrast to the PS, the spokesman for the UMP, and France, in the area of security, justice and migration never shied away from being associated with issues commonly endorsed by the FN. In fact, in an interview to the French daily *Le Parisien* (29 March 2006), Sarkozy even declared that he is out to 'seduce the electorate of the *Front National*' and that he will gather them 'one-by-one'. In his presentation of the 2006 French Immigration and Integration Law on 2 May 2006, he indicated that 'in a modern democracy, immigration is not a taboo question' (our translation, *Assemblée Nationale* 2006b). Sarkozy promised that he would not 'flee' from the immigration debate since he believes that the 2005 *banlieue* riots were a direct failure of the French integration system (*Assemblée Nationale* 2006b).

Some observers argued that there is a discernable 'lepenisation' in Sarkozy's rhetoric, i.e. an injection of illiberal stances that are often reserved for usage by the extreme-right parties (Tissot and Tévanian 2002). There is some evidence to confirm this claim. In a Party Congress welcoming new members on 22 April 2006, Sarkozy indicated that 'if there are certain people who do not like France, they should leave it' (our translation, quoted in Libération 2006a). Sarkozy's statement is summed up in a former FN catchy slogan (also attributed to Philippe de Villiers, another contestant for the 2007 French Presidential election): 'France you love it or leave it!' (*La France tu l'aimes ou tu la quittes*). Although sharing a similar way of expressing their views concerning migration, Le Pen and Sarkozy differ on one important aspect: Sarkozy, being the current Interior Minister, is in an institutional position to introduce new migration policies should he feel the need to do so.

In terms of 'timing', the *banlieue* riots in late 2005 certainly provided an immediate context through which immigration and integration issues can be debated and policy change introduced in 2006. However, some observations suggest that other factors may have also encouraged the introduction and adoption of the 2006 French Immigration and Integration Law. As mentioned in the introduction, the current law is the second adopted within a single parliamentary term. The rapid adoption of one policy after another suggests a sense of urgency, which is not ordinarily addressed through changes in the law of the Republic. For example, in 1998, a simple ministerial instruction from the ministry of labour enabled companies to recruit foreign workers in connection with the monetary transition to the EURO. The declaration of a state of emergency, a Presidential prerogative, is also available should the situation call for it; Chirac declared a state of emergency during the 2005 *banlieue* riots, which was only lifted in January 2006.

One might suggest that a ministerial instruction or the declaration of a state of emergency is a short-term or momentary solution and the 2006 French Immigration and Integration Law represents a long-term vision of how migration matters should be handled in the future. However, within the context that *two* long-term visions were presented and adopted within the space of three years, this explanation is open to contestation. Moreover, when Sarkozy presented the law to the National Assembly, accusations were made with regard to his primary motivation for introducing the law. Jean-Pierre Brard, affiliated with the Communist party, asserted that Sarkozy introduced the law because he wanted to win the upcoming

French Presidential election in 2007 (Assemblée Nationale 2006b). Is there any evidence to support this claim? And, perhaps a more fundamental question: is it worth considering this assertion? It is worth considering this claim because Sarkozy has played a crucial role in both instances of migration policy change. Yet, to conclusively confirm that Sarkozy's motivation in pushing for the recent policy change is rooted in his electoral ambitions, one naturally needs his own admission. Given that this is currently unavailable, one can only speculate on existing evidence, namely, Sarkozy's candidature for the 2007 French Presidential election, his approach towards migration issues, and how important the French public views the issue of immigration.

In November 2004, Sarkozy became the President of the UMP, a party commonly associated with President Jacques Chirac. In succeeding Chirac as the UMP leader, it was widely acknowledged by observers and the media that Sarkozy also sought to replace Chirac as the next President of the French Republic. Sarkozy's ambition to reach the Palais de l'Élysée was certainly not hidden. As far back as in 2003, in an article in the *Libération* (our translation, 2003), it was reported that 'Sarkozy admits that he thinks often about the presidential deadline of 2007: "and not simply when I shave myself"'. Since his successful comeback into French politics, after his miscalculated support for Édouard Balladur for the Presidency in 1995, Sarkozy has carved out his current political career as a pragmatist and France's 'top cop' (Webster 2002; Thornhill 2005; Keaten 2006).

The issue of immigration has also steadily grown in importance since Le Pen's successful bid in the first ballot for the 2002 Presidential election. A TNS-Sofres poll (2005) published in *Le Monde* in December 2005 shows that 63% of those interviewed thought that there were too many immigrants in France; the implication here being that they think migration flows should be controlled. From this perspective, Sarkozy's introduction and promotion of the 2006 French Immigration and Integration Law can be interpreted as a response to this public sentiment. In fact, in defence of the law, Sarkozy asserted that 'when republican parties, on the left as on the right, do not have the courage to deal with what worries the French, one should not complain when the extremes take the vacant place that others have deserted!' (our translation, Assemblée Nationale 2006b). In a more recent TNS-Sofres poll (2006a), among the French interviewed, immigration is ranked number seven out of eighteen in terms of the issues that they would like to see the candidates debate during the 2007

election. In fact, the issue of immigration has steadily climbed from being the number twelve issue in February 2005 to number ten in January 2006, and then seven in August 2006.

In the light of the importance of immigration measures and issues concerning immigrant integration, Sarkozy's handling of the 2005 *banlieue* riots and his push for the recent policy change can be seen as a demonstration of his pragmatism and zero-tolerance attitude towards what he considered as criminal activities. When invited to express his views concerning the *banlieue* riots to the French television station TFI on 2 November 2005, Sarkozy condemned the rioters at Argenteuil as 'felons' (*racaille*). Furthermore, when visiting La Corneuve, Sarkozy has been quoted as saying on television that one should clean these *banlieues* using a high-pressure water cleaner, or *Kärcher* in French (L'Humanité 2005). Sarkozy has therefore often been referred to as a *Kärcher* by the French media. Although public opinion concerning his handling of the *banlieue* riots is only slightly in favour (with 55% of the French interviewed indicating that they are confident that Sarkozy will reduce the violence in the *banlieue*, and 40% saying that they are not confident), a significant portion of those interviewed, at 83%, said they believed that Sarkozy is authoritative (TNS-Sofres 2006b). Furthermore, 63% of those interviewed indicated that they are confident that Sarkozy will fight effectively against delinquency (TNS-Sofres 2006b).

The strategies outlined by the 2006 French Immigration and Integration Law also reflected Sarkozy's pragmatic and zero-tolerance approach. The preference for *immigration choisie* is pragmatic because it permits France to select migrants to fit its needs. The removal of the automatic regularisation after ten years of residence in France is a reflection of Sarkozy's zero-tolerance attitude. In fact, Sarkozy interpreted automatic regularisation as a 'reward for the prolonged violation of the law of the Republic' (our translation, Assemblée Nationale 2006b). His negative perception of regularisation is again reflected when he criticised Spain and Italy's recent decisions to grant amnesty to irregular migrants: 'These countries should have asked for the support of other EU countries before doing this...Otherwise what is the point of the Schengen agreement [which removes internal borders]' (quoted in Jones 2006). His pragmatic and no-nonsense approach towards immigration gained some favour with the French, with 51% of the French public interviewed indicating their approval of his decisions concerning immigration matters and 43% not in favour of Sarkozy's approach (TNS-Sofres 2006b).



To conclude, in the case of the 2006 French Immigration and Integration Law, the three conditions that Hansen and King argued are essential for policy change were present. It is indicative that there is a convergence between these ideas concerning migration control and existing political interests. Furthermore, political actors who possess the requisite institutional platforms also endorsed the changes proposed by these ideas; or were at least not against the issue of migration control. It is difficult to conclusively deduce if Sarkozy's introduction of the 2006 French Immigration and Integration Law is driven mainly by his ambition to become the next French President. However, given that the French public increasingly viewed migration and integration issues as important, it is possible that the current electoral context, in addition to the 2005 *banlieue* riots, served as an opportunity for policy change. If so, to what extent the push for the recent policy change will help Sarkozy in his bid for the Presidency in 2007 remains to be seen.

## **Conclusion**

This working paper examined the factors that have led to the adoption of the 2006 French Immigration and Integration Law. Although the assumed need to transpose two EU Council directives concerning long-term residents and the free movement of persons is considered important and relevant in understanding the law, these two Council directives did not exert sufficient pressure to bring about the recent policy change. Put simply, the 2006 French Immigration and Integration Law is not a case of Europeanisation. In fact, the domestic context provided more explanation as to why the law was introduced. By preferring a model of *immigration choisie*, the recent policy change sought to redress the imbalance in the numbers of TCNs entering France on the basis of family reunification, which is comparatively and proportionally higher than its neighbouring countries. In introducing mandatory integration for all potential long-term residents, the 2006 French Immigration and Integration Law specifically targeted the failure of previous attempts to integrate migrants. This aspect of the law can be seen as a direct response to the 2005 *banlieue* riots, which has been caused by, as some researchers argued, the failure of migrant integration. Furthermore, along the line of *immigration choisie*, the 2006 French Immigration and Integration Law also eliminated the process of automatic regularisation.

Even though the law does address specific domestic concerns, its timing is questionable considering that France has only recently undergone another change in its migration legislation. In terms of timing, this paper finds that several factors were responsible for the recent policy change. Firstly, there is a convergence between political interests and the issue of migration control. This convergence encouraged political debates concerning migration and immigration integration to take place; and it also provided political actors with the forum through which they can demonstrate their leadership. Secondly, the rising interest in migration issues among the French public also contributed to the recent policy change. This observation is closely linked to the third factor, namely, within the context of the upcoming French Presidential election, one might even argue that Sarkozy, the main promoter of the law and prominent Presidential contender, advanced the 2006 French Immigration and Integration Law to demonstrate his leadership skills and ability to address public concern. In this concluding section, this paper examines the implications that the recent French migration policy change would have on EU level developments in the area of freedom, security and justice.

EU member states started cooperating in asylum and immigration policies within the formal EU setting in 1992 (for overview see Boswell 2002). There were very little developments and advancements during the 'early period' because the law-making procedure hampered the process. The policy-making procedure stipulates that only EU member states, in the settings of the European Council and the Council of Ministers, can decide by unanimity the final outcome of any migration policy, with very little input from the Commission and Parliament. Although these two policy areas were transferred into Community competence in 1996, and the decision-making procedure changed from unanimity to co-decision with the European Parliament in 2005, these changes do not apply to legal and labour migration policies. According to interview information, one of the main challenges in moving legal and labour migration policies to Community competence is the unwillingness of member states to cede what they consider sovereign powers to the EU. This is evident in the lack of actual EU migration policies addressing conditions of entry and residence for TCNs.

The recent French migration policy change will have several implications for EU level developments. Firstly, by virtue of the EU decision-making procedure in the area of legal

migration policies, the adoption of the 2006 French Immigration and Integration Law would mean that the existing difficulty in garnering a consensus with regard to a common EU migration policy is likely to persist, if not increase. France is merely one, albeit a very important one, out of 25 countries (with opposing views and policy preferences) that needs to agree on a policy outcome before it becomes official EU policy. In the case of its recent domestic policy change, France has clearly demonstrated that it prefers its national approach over European solutions. Secondly, the adoption of the 2006 French Immigration and Integration Law indicates that if any EU policies were to result in the future, it is likely to be security-oriented or restrictive in spirit. The preference for EU policies that are security-oriented or restrictive in spirit is again due to the need to vote by unanimity in the Council of Ministers. Interview information suggests that measures which reinforce security within the EU are currently more popular among EU member states than measures that sought to construct a framework of rights for long-term EU residents (see for example European Commission 2005b). The recent French migration policy change reinforces this preference by removing the right of automatic regularisation and implementing mandatory integration for any potential long-term residents in France. In sum, the adoption of the 2006 French Immigration and Integration Law is a reminder that the EU has a long way to go before the emergence of a common EU migration policy.

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