On 12 February 2003 the European Commission launched an Action Plan for a More Coherent European Contract Law. A number of commentators have heralded this follow-up to the earlier 2001 Communication and Green Paper on Consumer Protection, of the same year, as a legal milestone. Yet, does the Action Plan signal the birth of a viable roadmap to improved coherence and uniformity in cross-border contracting or rather, with its heavy emphasis upon sector specific interventionism, a post-mortem on European contract law? It would appear prima facie that the idea for a uniform Community-wide system of contract is the primary casualty of the 2003 initiative. More crucially, given the market-inspired tendency towards divergence in European contracting it is questionable whether the stated goal of improved coherence can itself be adequately benchmarked.
Perhaps one of the most significant achievements of the Action Plan has been to quell the hitherto largely sterile debate as to the merits and de-merits of a comprehensive codification effort. Nonetheless, the problématique as to how best to manage legal diversity in the Internal market remains unresolved and proponents of codification will doubtless continue to make their voices heard in the debate regarding the content of a so-called Optional Instrument.

The aim of this paper is to critically examine the tripartite approach of the Commission outlined in the Action Plan. This strategy includes (a) the improvement of the acquis through the elaboration of a Common Frame of Reference containing common rules and terminology (b) the promotion of the use of EU-wide standard terms and conditions, and (c) further reflection on the need and value of a horizontal Optional Instrument.

The general orientation of the Action Plan towards co-regulation and the encouragement of 'best practices' allied to the Commission's willingness to engage all stakeholders in the formatting of contract laws reveal important lessons learned via the directly-deliberative consultation process. Whilst it is argued that the Commission strategy is directed more towards itself than economic actors on the market and is strongly in keeping with both the Governance White Paper\(^4\) and the Better Regulation Action Plan\(^5\), particular close attention is paid to the third proposal which, at present, appears somewhat oblique and ill-defined.

1 COMPLETING THE INTERNAL MARKET AND LEGAL DIVERSITY - THE ECONOMICS OF HARMONISATION AND THE BENEFITS OF CONTINUED INTER-JURISDICTIONAL COMPETITION

That private law has until relatively recently remained in splendid isolation from the wider process of Community integration is perhaps not surprising when one considers that the constitutional significance of private law discourse is seldom appreciated by public law communities. In turn, European private law scholars rarely forage deep into areas of public law. The absence of such an interdisciplinary dialogue is doubtless one of the primary reasons why private law specialists, in discussing the regulatory framework required for contractual relations to flourish in the new Europe, have tended to promote codification as a definitive solution. The potential negative side-effects of such a one-dimensional approach are...