EXTENDED TABLE OF CONTENTS

List of abbreviations xiii
Table of cases and opinions xv
Table of legislation and official documents xxxi

PART A INTRODUCTION AND BACKGROUND

1. INTRODUCTION
   A. THE VIGILANCE OF INDIVIDUALS IN EU LAW 1.01
      1. The creation of a private enforcement model 1.01
      2. EU involvement with private enforcement 1.06
   B. THE EU LEGISLATIVE FRAMEWORK 1.09
      1. Brief overview 1.09
      2. Purpose and selection 1.14
      3. Outline 1.17

2. KEY PRINCIPLES, PUBLIC ENFORCEMENT AND CASE LAW
   A. NATIONAL PROCEDURAL AUTONOMY, EQUIVALENCE AND EFFECTIVENESS 2.01
      1. Principle of national procedural autonomy 2.01
      2. Principle of equivalence 2.05
      3. Principle of effectiveness 2.07
   B. PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION 2.10
      1. Effective judicial protection: Introduction 2.10
      2. Effective judicial protection: Application 2.13
   C. PUBLIC ENFORCEMENT 2.16
      1. Infringement proceedings 2.16
      2. Other forms of public enforcement 2.18
   D. KEY CASE LAW RELATING TO PRIVATE ENFORCEMENT 2.21
      1. Simmenthal, Factortame and Francovich 2.21
      2. Courage and Muñoz 2.24
      3. Comparison and assessment 2.26

PART B SELECTED EU LEGISLATION

3. PUBLIC PROCUREMENT LAW
   A. INTRODUCTION 3.01
      1. Substantive EU public procurement law 3.01
      2. Procurement Remedies Directives: General issues 3.04
      3. Additional general remarks 3.10
   B. REMEDIES 3.13
      1. Interim measures and setting aside injunctions 3.13
      2. Actions for damages 3.16
      3. Contractual remedy 3.20
   C. PROCEDURAL PROVISIONS 3.25
      1. Legal standing, limitation periods and standstill periods 3.25
      2. Forum and procedure 3.28
D. OTHER ENFORCEMENT ISSUES
   1. Alternative dispute resolution and settlements 6.44
   2. Public enforcement 6.46

PART C COMPARISON AND CONTEXTUALISATION: REMEDIES AND PROCEDURES

7. ACTIONS FOR DAMAGES AND ACTIONS FOR INJUNCTIONS
   A. ACTIONS FOR DAMAGES 7.01
      1. General: Contradictions and paradoxes 7.01
      2. Fault 7.06
      3. Causality 7.10
      4. Quantification of damages 7.14
      5. Qualification of damages and joint and several liability 7.18
      6. Punitive damages and other damages going beyond compensation 7.22
   B. ACTIONS FOR INJUNCTIONS 7.26
      1. Comparative overview and general remarks 7.26
      2. Injunctions: Practice and applicable conditions 7.29
      3. Competition law and cross-border litigation 7.33

8. CONTRACTUAL AND OTHER REMEDIES
   A. CONTRACTUAL REMEDIES 8.01
      1. Terminology, nature and functioning in practice 8.01
      2. Member States' flexibility and non-infringing provisions 8.07
      3. Excluded contracts 8.09
   B. OTHER PRIVATE ENFORCEMENT REMEDIES 8.14
      1. Interim relief 8.14
      2. Measures on the disclosure of evidence 8.19
      3. Recurring penalty payments 8.23
      4. Publicity measures 8.26
      5. Measures on legal costs 8.29
      6. "Unregulated" remedies: Declarations, unjust enrichment, restitution 8.33

9. PROCEDURAL ISSUES
   A. SCOPE AND LEGAL STANDING 9.01
      1. Scope 9.01
      2. Legal standing 9.05
   B. LIMITATION PERIODS AND RULES OF EVIDENCE 9.09
      1. Limitation periods 9.09
      2. Rules of evidence 9.15
   C. FORUM AND RULES FACILITATING SETTLEMENTS 9.19
      1. Forum 9.19
      2. Rules facilitating settlements 9.23
   D. JUDICIAL REVIEW 9.28
      1. Standard of judicial review 9.28
      2. Own-motion judicial review 9.32

PART D BROADER ASPECTS, PERSPECTIVES AND CONCLUSIONS

10. THE HOW, WHEN AND WHY OF EU LEGISLATION ON PRIVATE ENFORCEMENT
   A. THE EU’S LEGAL SCOPE TO ACT 10.01
      1. Legal basis issues 10.01
      2. Subsidiarity, proportionality and fundamental rights 10.07
      3. National procedural autonomy revisited 10.11
EXTENDED TABLE OF CONTENTS

B. POLITICAL ASPECTS AND POLICY-RELATED FACTORS 10.15
   1. Political aspects 10.15
   2. Overall enforcement framework 10.18
   3. International dimension 10.23
   4. Temporal aspect 10.25
C. THE ADDED VALUE OF EU LEGISLATION ON PRIVATE ENFORCEMENT 10.29
   1. Legislative v judicial action 10.29
   2. Other relevant factors 10.34
D. COHERENCE AND FRAGMENTATION 10.37
   1. Coherence and fragmentation at EU level 10.37
   2. Coherence and fragmentation at national level 10.42
   3. Towards a more coherent approach? 10.46

11. TWO PERSPECTIVES ON PRIVATE ENFORCEMENT
A. THE EFFECTIVENESS PERSPECTIVE 11.01
   1. Two expressions of effectiveness 11.01
   2. From dual nature to dual vigilance 11.04
   3. Tensions and potential conflicts 11.08
   4. Three final remarks 11.13
B. THE HORIZONTALISATION PERSPECTIVE 11.16
   1. The horizontalisation of EU law and its enforcement 11.16
   2. Private enforcement implications 11.21
   3. Costs, litigation culture and diffuse interests 11.25
   4. Hybrid enforcement 11.28
   5. Fundamental rights (1): Horizontal effects and “civil” rights 11.33

12. SUMMARY AND CONCLUSIONS
A. PRIVATE ENFORCEMENT BETWEEN INTERFERENCE AND AUTONOMY 12.01
   1. The scope for enacting EU legislation on private enforcement 12.01
   2. The limits to the EU’s scope to act and its consequences 12.04
B. REMEDIES AND PROCEDURES FOR PRIVATE ENFORCEMENT PURPOSES 12.07
   1. Actions for damages 12.07
   2. Actions for injunctions 12.10
   3. Contractual remedies 12.13
   4. Interim relief, measures on the disclosure of evidence and penalty payments 12.17
   5. Publicity measures, legal costs and “unregulated” remedies 12.20
   6. Scope, legal standing, limitation periods and rules of evidence 12.23
   7. Forum, rules facilitating settlements and judicial review 12.27
C. PRIVATE ENFORCEMENT IN PERSPECTIVE 12.30
   1. Private enforcement as a supplementary enforcement instrument 12.30
   2. Concluding remarks 12.38

Bibliography 565
Index 599