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One of the main safety rules in diving, is to never dive alone ! Each of us relies on the assistance, that should be provided by his/her partner in case we have to face a dangerous situation.

I will do it for him/her and I trust that he/she will do it for me (otherwise you should not dive!). That's usually known as **"The Good Samaritan Law"**.

But asking an attorney at law to explain, according to his/her national legal system, especially in Europe, what the "Good Samaritan Law" is could leave him/her more than surprised… Any search in the contents of any European legal book, will surely leave you more than disappointed…

However "The Good Samaritan Law" appears as probably one of the more important legal concepts in any legal system. Let's see, then, what this "Good Samaritan Law" is than cannot be in fact invoked in any European Court of Justice… And that any legal system should however abide by!
At least in Europe, "The Good Samaritan Law"… is not a Law… it is a legal concept. In order to understand its exact meaning, we have to have, briefly, a look at a parable in the New Testament, Gospel of Luke, chapter 10, verses 25–37.

Most of the people consider that this parable illustrates that compassion must be a universal moral duty, and that fulfilling the spirit of the Law is just as important as fulfilling the letter of the Law. The Good Samaritan Law is then in fact a universal moral concept according to whatever the legal system is, it has to support and encourage people to assist and rescue those in need. But, usually, such moral concepts, cannot be invoked in Court.

The legal systems then have to integrate specific rules in order to encourage in assisting those in need, and to reduce the bystander's hesitation in assisting, for fear of being sued or prosecuted for unintentional injury or wrongful death.
Two main legal systems exist in Europe : The English common Law, and the Civil Law originally based on the Napoleonic Code that has been impacting so many European legal systems. Let's have a look at these two primary legal systems in order to appreciate how the European legal systems deal with the "Good Samaritan Law".

THE ENGLISH COMMON LAW vs THE NAPOLEONIC CODE

GREAT BRITAIN

Unlike most of the rest of Europe, the legal systems of the countries making up the United Kingdom are based on what is known as 'the common law', that is to say principals of general application which have been adjudicated upon by the courts dealing with specific cases, and refined along the way. This cumulative process is assisted
by the doctrine of precedence, which requires a court dealing with a given legal point to follow the

previous decisions of the higher courts on that point. This common law system operates in England and Wales (on which this essay will focus), but also in the separate legal systems applicable in Scotland and Northern Ireland, and has, for historical reasons, also been exported to many other parts of the world, notably North America and Australasia. So close are the links between the common law systems across the world that it is not unusual for the Court of Appeal in England, for example, to have regard to cases decided under Scottish law or to the decisions of the higher courts
of the USA, Canada, Australia or New Zealand, although such decisions will be regarded as persuasive rather than ones the English court is obliged to follow. The effect of this has been to achieve a fair degree of consistency across the jurisdictions.

While Parliament has been very active in many areas of law by passing law in the form of 'statutes' (Acts of Parliament), for example, in the criminal law, there has been significantly less statutory input into the law governing the determination of civil wrongs and the consequences that flow from them. This area of law, which has largely been developed by the common law process described above, is called The Law of Tort. It is this field, principally,
that would regulate the situation described by the phrase, 'The Good Samaritan Law'. In fact this is a phrase one does not encounter in the English law, although it has been adopted in at least two states in the USA.

Even if the phrase is unfamiliar to English lawyers the situation of the person who, becoming aware of a stranger who is injured or in danger, elects to help is one to which the law of any country needs to develop an approach. The starting point for any consideration of such a situation in the English law is the principle pronounced by Lord Goff in the House of Lords (the highest appeal court in the UK) in Smith v Littlewoods Organisation Ltd [1987] 2 AC 241 that "the common law does not impose liability for what are called pure omissions", in other words, there is no general duty of care owed by one person to prevent harm occurring to another. Thus, applying English law, those in the bible story who passed the wounded man by before the Samaritan came along were entitled to do as they did. Whatever their moral duty, they were under no legal duty to come to his aid, and could not be held liable in an English court for failing to do so.

A duty to act only arises where there is a relationship which gives rise to such a duty. The normal means by which a duty of care will be created is by a contract between the parties, or by statute, such as the Occupiers' Liability Act 1957, although the common law itself has recognised that certain relationships do give rise to a duty to aid another: parent and child, school and child, host and his guests etc. However, this does not alter the fundamental principle that a man does not in English law owe a general duty to a stranger to come to his aid, however great the peril the stranger faces and however easy it may be in the circumstances to lend assistance without exposing himself to danger.

The potential harshness of this rule is best illustrated by an American case, Osterlind v Hill 160 NE 301 (1928). Here A, a strong swimmer, hired a canoe to B, then sat on the shore and watched B drown after capsizing it. Even the fact that he had hired the canoe to B was held not to give rise to sufficient of a relationship to create a duty of care, and he was found not to be liable. It would, of course, have been different if the canoe had been defective, but the claim would then have been based on the supply of faulty or dangerous goods, not on a failure to respond to an accident. It is to avoid the creation of a society in which people consider it best not to get involved, or as the bible story puts it, to pass by on the other side of the street, that two US states have by statute created a duty to help a stranger (without exposing oneself to danger) backed up by modest criminal penalties for failing to do so.

While the courts have been very reluctant to impose liability for a pure omission, once a person faced with a 'rescue situation' does decide to act, the situation is very different. A rescuer who was under no duty to

begin with may assume a duty of care by starting to come to this victim's aid, and may be found liable if he makes matters worse.
This on the face of it surprising proposition flows from the distinction that the common law draws between non-feasance, an omission to act (for which one cannot be liable without a specific relationship creating a duty to act), and misfeasance, an act wrongfully or negligently performed, for which one can undoubtedly be liable.

Many legal commentators have argued that this 'front loading' of the issue onto the question of whether there is a duty of care is less satisfactory than would be the approach of acknowledging the existence of a general duty of care owed by us all to our fellow man, but then judging the reasonableness of a person's response in light of all the circumstances, including in particular any risks his intervention would create to himself or third parties. Such a development would bring English law more into line with the mainstream of European jurisprudence from civil code
jurisdictions, but the case law reveals little movement in this direction, except that the majority of the members of the House of Lords in *Smith v Littlewoods Organisation Ltd* seemed by implication to acknowledge the possibility of liability for a pure omission to act, although they made no clear pronouncement to that effect.

We have looked, then, at the position of the bystander who decides not to get involved, who cannot be held liable unless he owes the victim a specific duty to act because of some relationship between them, and at the position of that person if he decides he cannot stand idly by, but must attempt a rescue. In the latter case he may potentially expose himself to liability if he makes matters worse. It is clear though that the approach of the courts will be one of being sympathetic to his plight and of avoiding making unrealistic demands of his rescue efforts.
Thus, in the Canadian case *The Ogopogo* [1971] 2 Lloyds Rep 410 a guest at a boat party fell overboard, the host attempted to reverse the boat to pick him up but failed to position it correctly, and a second guest dived in to effect a rescue. Both guests drowned. Though the Canadian Supreme Court held that while, as their host the defendant did owe a duty of care to his two guests, he had not been negligent in the circumstances in the way he had attempted to conduct the rescue. A duty of care there may have been but the court was reluctant to hold him to a high standard of care.

FRANCE

It is under the Authority of the Emperor Napoleon that the main principles of the French Law were codified in 1804, in a "Civil Code", that allowed them to be disseminated across Europe and have quite impacted all the different legal systems in Europe.

The foundation of the Civil Law is not to protect from liability the one who elects to assist… but to sentence the ones who don't : the Civil Law is so ground on a Duty to Rescue. However, since then, the legal system of each sovereign state has evolved differently, so that differences exist despite a common ground.

The French Law, not only does not seek to exonerate the rescuer from any liability in the event of inappropriate help, but quite to the contrary it intends to punish – both in criminal and civil law – the bystander who, directly witnessing a dangerous incident, does not intervene even though to do so would pose no risk to him or a third party.

Criminal Code Art 223-6
"Whoever voluntarily fails to provide to a person in danger the assistance that, without risk for himself or a third party, he could provide, either by his own actions, or by initiating a rescue may be punished by up to five years imprisonment and a fine of up to 75.000 Euro".

Such a failure to provide assistance to a person in danger, such a breach of duty to rescue, constitutes not only a criminal offence, but also a civil wrong.

Therefore, this duty to rescue is not without other legal risks.

Article 1382 of the Civil code, the cornerstone of the French Law of Torts, states:
"Any act which causes harm obliges the one whose fault caused the harm, to make reparation for it".
Consequently, the rescuer who provides assistance, and by doing so causes harm, whatever it is, to the victim or a third party, will be liable, again, at least under civil law (and possibly under criminal law), e.g. for "battery".
The French Law can thus appear very harsh towards the rescuer, who faced with a difficult situation, has the dilemma of whether or not to act, and to face the possibility of being sued either for his act or for his omission.

Because the moral values found in the Good Samaritan Law are universal, academic opinion and case law sought to tone down the strictness of the above principles by introducing into French Law the concept of:

1. The "Etat de Nécessité" which could be translated as "Status of Necessity", a defence based on the need to avoid danger (which is different from the "Force Majeur"), which can can legally justify the harm caused to the victim, or to a third party, by the voluntary rescuer: The Criminal code has stated since 1984 that the "Status of Necessity" is a legal justification for damage (Article 122-7). "Status of Necessity" is the situation of the person for whom the only means of avoiding an evil, is to cause another one, of less importance… It is quite unanimously accepted that the "Status of Necessity" removes the civil wrong as well as the criminal offence. Consequently, no responsibility founded on the fault could in theory be held against the rescuer who acted by necessity. However, when the rescuer causes harm to the victim or a third party, his behavior, his act, must have been essential to protect the interests of the victim so that the damaging act can be justified, and the liability of the rescuer removed (Cass. civ., 8 janv. 1894).
Thus the "Status of Necessity" covers "minor faults", "minor offences", or misdmeanours (carelessness, awkwardness, lack of precautions), which the rescuer could commit when providing assistance.
Only a serious offence could lead to criminal or civil liability for the rescuer: the need to provide assistance cannot justify a grave mistake or unforgivable carelessness. This is true as well for the damage caused to the assisted person as to a third party (Cass. 2nd civ., 8 avr. 1970).

2. The recognition by the case law of an "Implied Contract of Reciprocal Assistance / Rescue" entitled the rescuer to be indemnified by the victim for the damage the rescuer might suffer himself or cause to a third party. According to article 1382 of the Civil code, the victim, guilty of no fault, cannot be sued for the harm caused to his rescuer or a third party, resulting from acts done during a rescue. The rescuer, according to strict principles, would be liable to third parties for the harm his rescue caused them, and would have no recourse against the victim for harm the rescuer sustains during the rescue. In order to circumvent the harsh consequences of this principle of French Tort of Law, the case law recognises now the existence of an implied "reciprocal contract of assistance /rescue" between the rescuer and the victim. In this way, the liability is no longer founded on the Tort of Law, but only on contractual grounds. However since the existence of a contract is recognized, the parties and particularly the victim are obliged to compensate, to indemnify – on the ground of article 1135 of the Civil code – his rescuer for the harm he suffers himself or causes to a third party, by abiding by the "implied contract of reciprocal assistance" for the benefit of the victim.

Thus, in a case relating specifically to a diving accident, the Paris' Court of Appeal, in its decision of January 25th, 1995 held: *"With regard to the practice of a sport presenting indisputable risks (…), the*

buddy team members engage, implicitly, but necessarily, in a mutual, reciprocal duty of rescue, whose obligations are based on a fundamental moral duty. Each undertakes to provide to the other assistance and each to accept it, as a guarantee of reciprocal survival, on the assumption that the circumstances of the accident would make it impossible for either to expressly confirm this acceptance". "With ground on article 1135 of the Civil code, this contract implies the obligation (for the victim) to assume the legal consequences as justice demands".

Thus by affirming the existence of an implied contract, and by supposing the assent of the two parts to this one, the case law allows – using a contractual ground – to impose obligations "in equity"; obligations that are charged to the victim, for the benefit of its rescuer, so that this one can be – at least – guaranteed for the financial consequences of its voluntarily acts.
Then, in order to prevent that the saved party responsibility would try to exonerated itself of this new contractual liability, the French Case Law finally states that:
"The damage undergone by the voluntary rescuer doesn't constitute an unforeseeable damage on the ground of article 1150 of the Civil code, of which assisted party can prevail itself to reduce its responsibility".

Thus, despite the strictness of its principles, the French Law doesn't ignore the moral and legal need of protecting the Good Samaritan's interest.

Download the in-depth article in French.

GERMANY

German Civil Law has its origins in different codifications in the 18th and 19th century, one of the origins being the French Code Civile, which is the reason why certain (civil) rules are quite similar to French Law. The Criminal Code has its origins in other codifications and contains a codification of a duty to rescue almost the same as Finland has.

1. Basic Principle: Duty to Rescue. If an individual happens to be in danger, any other individual is obliged to provide reasonable and necessary aid. Basically, the person providing aid will not face legal consequences, even if the help provided is – from an objective point of view – not optimal. But the failure to come to the rescue of a person in danger is a criminal offence in Germany and draws consequences both in criminal and civil law to the person failing to provide help. If the helping individual suffers damages in the course of helping, the person that required aid and the person that caused the perilous situation can be held liable for this.

2. Criminal Law. The basis for the German Law's duty to rescue is codified in § 323c of the German criminal Code, the "Strafgesetzbuch" or "StGB": Whoever fails to provide help in cases of disaster or imminent danger or distress, although this [help] is necessary and reasonable under the circumstances,[and is] especially without considerable danger for his own and without violation of other important duties possible, will be penalized with imprisonment up to one year or fined. As one can easily see, the rule addresses virtually everyone from whom aid can reasonably be expected, no matter if the individual is involved or simply a witness. This principle is thus similar to the French principle codified in Art. 223-6 of the Code Pénale. On the other hand, one can only commit the crime of non-assistance towards the person in danger if both the fact that the individual is in danger or distress is known and the ability to provide the necessary aid is reasonably given.

A person that is a guarantor for health and safety of another person or guarantor for certain legal protected interests, is chargeable even for assault and battery or homicide and not only the violation of

the duty to rescue, if it fails to fulfil this obligation and does not provide necessary aid. An individual can be in the position to be a guarantor by certain legal rules, by causing a hazardous situation for someone else or out of contractual duties – a diving instructor for example is a guarantor for the health of his Open-Water-Diver-students during training dives.

A diver may be a guarantor for the health and safety of his buddy, especially if the buddy is inexperienced. In its decision of 29.01.1999, the Landgericht (County Court) Darmstadt has sentenced an experienced diver for negligent homicide because this diver had left his inexperienced buddy alone. In the judgement, the Landgericht Darmstadt stated that the buddyteam had been an alliance against the dangers of diving and the surviving diver had failed to
fulfil his obligations arising from this alliance, thus being guilty of negligent homicide by omission.

3. Tort Law – Liability between Rescuer and Victim

If an individual coming to the rescue of another causes damages to the individual in danger or to a third party intentionally, this will be justified by an „exculpatory state of emergency" – if the causation of the damages was necessary to provide the aid – or justified by consent of the victim. If the victim that needed aid was not able to communicate its consent, it is common opinion in German Law that consent can be assumed if a reasonable person would have declared its consent with the actions undertaken to help. Both justifications remove the criminal offence as well as the civil wrong. An example of a help causing damages to the person receiving help is the case of broken ribs caused by a (necessary) cardiopulmonary resuscitation. This injury fulfils the offence of assault and battery but is justified both by assumed consent and an exculpatory state of emergency.

A helping person will mostly act as an agent of necessity, because the provision of aid is, from a reasonable point of view, in the interest of the person in need for help. The figure of "agency of necessity" ("Geschäftsführung ohne Auftrag") is codified in § 677 BGB, the German Civil Code, the "Bürgerliches Gesetzbuch" and can be compared to the French concept of the implied contract of reciprocal assistance/rescue. It is as well codified that the agent of necessity can demand his expenses from the principal, in case of the provision of aid one can demand compensation for damages to property and health the rescuer had to sustain from the person receiving help. In addition, § 687 BGB states that an agent of necessity is liable only for gross negligence and intent. To assess negligence, the individual's abilities and the situation have to be considered, thus a paramedic will be evaluated quite different from someone who doesn't have a paramedic's abilities. In addition, it has to be kept in mind that even damages caused intentionally in a truly hazardous situation will most often be justified so the rescuer cannot be held liable. Thus, the rescuer can be held liable for damages by the the person receiving aid only in exceptional cases.

BELGIUM

1. The Belgian Law imposes on anyone who is capable to aid a legal duty to help a person, who is in great danger, without putting himself or others in serious danger (article 422bis Criminal Code).

Thus under penalty of a criminal sanction everyone has a moral obligation to help his fellow man, if such can be done without serious danger for himself or others. Although the Criminal Code penalizes the serious shortcoming of a humanitarian obligation, the modalities within which it occurs have to be explained in a reasonable fashion. Only a minimum of altruism is required, but no heroism.

The assistance needs to be given to a human, whose life or physical soundness need to be protected, whether or not the danger is caused by an illness, an accident, an assault, etc.

2. The constitutive elements of this crime consist of four major parts: the presence of great danger, the knowledge of this great danger, the refusal to render help or to provide help and the lack of serious danger the respondent or others (Court of Appeal Brussels 23 October 1963).

2.1. The person who requires help needs to be in “great danger”. The danger needs to be real.
This means that “apparent danger” or a possible, eventual danger or threat, does not satisfy. The danger has to be great, which implies a danger for the life or a serious danger for the physical integrity. The danger must not only be serious but also constant, real and actual (Court of Appeal Ghent 10 June 1999). The seriousness of the danger has to be ascertained at the moment of the refusal to intervene (Cassation 9 November 1964). That assessment has to be done in an objective way and not in a subjective manner from the sense of who ought to assist (Criminal Court Brussels 11 April 2003). The idea that such assessment of danger should only be made by a medical doctor acting under his professional consciousness is of course disputable (Criminal Court Arlon 17 November 1976). Finally the judge will decide sovereingly on the basis of all facts on the presence of a great danger (Court Martial 5 July 1977; Criminal Court Antwerp 20 November 2007).
The expertise of the respondent will be taken into account (Civil Court Tongeren 10 September 1998).
The cause of the dangerous situation is irrelevant (Court of Appeal 1 June 1973). The respondent can even be the cause of the great danger and will be obliged to aid the person in distress (Criminal Court Tournai 18 March 1987).
The person in distress cannot be forced to receive aid when it is expressly refused, except when this person is unconscious (Cassation France 3 January 1973).

2.2. Article 422bis Criminal Code requires that the omitter has ascertained himself the great danger or that the great danger has been described to him by those who sought his aid. It does not suffice that the danger is presumed. It needs to be ascertained (Criminal Court Tongeren 30 August 1963). The respondent needs to take appropriate measures in order to be able to reasonably ascertain the level of danger (Court of Appeal Mons 25 October 1996). When the omitter was present at the moment of the accident, it is presumed that he could not have erred about the seriousness of the accident and that he ascertained the great danger (Court of Appeal Brussels 12 February 1966; Court of Appeal Brussels 20 April 1966; Court of Appeal Ghent 1 June 1973; Military Court 28 June 1966; Court of Appeal Liège 28 October 1981; Court of Appeal Ghent 25 June 1997).

2.3. The violation of article 422bis Criminal Code is only punishable when it is willfully committed (Cassation 7 October 1981; Court of Appeal Ghent 6 November 1969). This means that the passive attitude, the omission, is caused by someone’s expression of will knowing the seriousness of the danger and deciding not to act. Not acting, out of carelessness or lack of caution, does not suffice. However a negative attitude or selfish indifference of the omitter, who did not or did hardly care about the person in need, should be regarded as an intentional attitude (Court of Appeal Mons 30 April 1982).

The level of effectiveness of the assistance is not taken into account during the assessment of the omission of aid, but the responder needs to strive to achieve efficiency (Cassation 9 November 1964; Cassation 26 June 1972; Court of Appeal Brussels 23 October 1963; Criminal Court Antwerp 20 November 2007). The responder who undertakes a serious attempt to aid, but does not succeed in his effort ought to be acquitted (Court of Appeal Ghent 11 December 1963; Criminal Court Ghent 30 September 1988). However the legal duty to help remains applicable as long as there remains or appears to remain a reasonable chance of reanimation (Criminal Court Brussels 2 January 2008).

Article 422bis Criminal Code does not require a special intent for the omission of aid to a person in great danger (Cassation 7 October 1981; Criminal Court Mons 8 February 1985). Article 422bis makes a

distinction between to render help or to provide help. To render help is done by the responder himself. To provide help means that the
responder seeks assistance of a third person who can aid. The two ways of help are unequal in the sense that the responder who is able to render help cannot limit himself to the provision of help. The respondent needs to render help first (Cassation 26 June 1972). Only when the personal rendered help seems to be impossible, inefficient or inexperienced, then the assistance of a third person can be sought (Cassation 26 June 1972; Court of Appeal Brussels 14 May 1974; Court Martial Brussels 10 November 1964).

2.4. Article 422bis Criminal Code determines a specific justification: "The crime requires that the omitter could have
helped without danger for himself or others." The Belgian legislator does not define this justification. However it does not require an act of heroism, just altruism. Nevertheless the danger needs to be serious (Criminal Court Brussels 20 March 1962). The danger needs to be actual and not potential (Cassation 9 November 1964).

3. The person in distress as well as its legal successors is entitled to claim compensation from the omitter for the damage caused due to the omission to help. However a heavy burden of proof lies on the person in distress (Civil Court Turnhout 11 January 1994).

4. The respondent can also claim compensation from the person in distress for any damage sustained during the rendering of help (Civil Court Namur 10 September 1976).

FINLAND

The Finnish legal system is a part of the European civil law tradition described above and in that perspective the whole 'Good Samaritan Law' concept is rather unfamiliar to Finnish lawyers and scholars. Achieving a comprehensive picture of the issue according to the Finnish law requires approaching the matter from two different aspects. The first is the Finnish Act of Non-contractual Damages (Vahingonkorvauslaki) and the second is the provisions of the Finnish Criminal Code (Rikoslaki).

The Finnish Act of Noncontractual Damages (unofficial translations made by the author) section 2 article 1 states as follows. *Whoever deliberately or by negligence causes damage to another is bound to compensation thereof, unless otherwise stated in this act.* Deliberateness and negligence are both defined in the Finnish Criminal Code and the concepts are used consistently throughout the entire legislation, including the Act of Noncontractual Damages. The term deliberateness is defined in the Finnish Criminal Code section 3 article 6.

The offender has caused the consequence deliberately if he or she has meant to cause the consequence or considered causing a consequence certain or rather likely. The consequence has been caused deliberately also when the offender has considered it to be certainly associated to the action.

The term negligence in the Finnish legal system is defined in the Finnish Criminal Code section 3 article 7.

Offender's action is considered negligent if he or she breaches against duty to take care in the circumstances in hand, even if he or she would have been able to comply.

According to the article above, negligence is assessed case by case using overall assessment, which consists several factors. The same action can or cannot be negligent depending for example on the person's education (layman vs M.D. or nurse), general knowledge (i.e. first aid training) or general circumstances (i.e. fatigue).

In certain cases a voluntary helper might deliberately cause damage to a person or property in order to save a greater good. The term 'necessity' (pakkotila) is determined in the Finnish Criminal Code section 4 article 5.

Action against [other] direct and coercive threat endangering legally protected interest [that is described

above in article 4] is allowed as necessity, if the action is assessed as a whole advisable, when comparing legally protected interest, the quality and quantity of the damage and harm caused, the origin of the danger and the other circumstances in hand. The necessity is one of the exemptions of liability according to the Finnish law. Despite the fact that necessity is described in the Criminal Code, it's also a defence against civil action damage lawsuit in most of the cases. In certain cases necessity might not protect the helper from civil liability against third party's claim. The assessment is made using overall consideration case by case.

The offences against which exemptions are needed relating to 'Good Samaritan Law' could be for example assault and battery (the Finnish Criminal Code section 21 article 5), involuntary manslaughter (section 21 article 8) and causing injury involuntarily (section 21article 10).

The contractual approach (i.e. implied contracts) used by certain jurisdictions is not possible in Finland as the Act of Non-contractual Damages deals with the matter comprehensively. The implied contracts are not unfamiliar to the Finnish legal system though.

The Finnish Criminal Code has both general provisions and a part that consists of descriptions of the elements of the offences. The general provisions related to 'Good Samaritan Law' have been dealt with above. Considering the provisions of the other part (erityinen osa) attention needs to be given to section 21 article 15. 'The duty to rescue' is more than a principle in Finland, since there is specific penal provision for failing duty to rescue.
Whoever knows that a person is in danger or there is a serious threat to that person's life or health and considering that according to his abilities and the nature of the situation he can be resonably expected to provide aid and he fails to give or acquire external help, that person is to be sentenced for failing duty to rescue, to a fine or maximum two years in prison.
There is also a provision of abandonment in section 21 article 14, but in order to be convicted for abandonment there has to be duty to take care of the victim. This falls slightly out of the scope of 'Good Samaritan Law'. There is only one ruling of the Finnish Supreme Court related directly to diving is KKO 1997:73. Among other issues in the ruling diving was considered a potentially dangerous activity. This dangerousness might be taken into account when making an overall assessment of the case relating to diving accidents. The discussion above is rather academic. The type of action is well established in the courts when it comes to matters relating to 'Good Samaritan Law' and common sense is still widely used in the Finnish courts. I would consider the legal state to be rather good in this field of law in Finland.

PORTUGAL
The focus of Portuguese Law, similarly to other continental European laws, relies on the liability (criminal and/or civil) of the rescuer or the bystander, instead of simply protecting from liability the ones who help or rescue someone in need. The obligation to provide assistance or to rescue underlies article 200, 1 of the Criminal Code (failure to provide assistance):

1. Whoever, in case of serious need, in a situation caused by disaster, accident, calamity or common danger which poses a risk to the life, physical integrity or freedom or others, fails to provide the necessary assistance in order to avoid such danger whether as a result of his own action or inaction or by failing to seek external help, shall be punished with imprisonment of up to 1 year or with a fine of up to 120 days.
The sanctions will be more severe if the failure to provide assistance comes from the person who created the danger (article 200, 2 of the Criminal Code):

2. If the above mentioned situation was caused by the one who failed to provide assistance, he shall be punished by up to 2 years imprisonment or fine of up to 240 days.

This general obligation to provide assistance is mitigated in article 200, 3 of the Criminal Code:
3. Failure to provide assistance shall not be punished when it may cause serious risk to the neglecter's life or physical integrity or when, for other relevant causes, said assistance is not foreseable.

In brief, we may say that there is a general obligation to provide assistance, either directly or simply by getting appropriate help from third parties, but such obligation and the inherent liability in case of failure is always limited by the circumstances of the concrete situation, such as the real possibility or capacity of the helper or rescuer to provide such assistance.

The provision of assistance or its omission is also likely to attract civil consequences either cumulatively with criminal liability or separately.
Portuguese law in article 483 of the Civil Code recognizes the general principle of civil liability: whoever harms anyone's rights has the obligation to repair the damages caused. This general principle applies to torts and to contractual liability. Therefore, in what concerns civil liability, the provision of assistance or its omission has to be viewed within the context of two different scenarios: torts or contractual liability depending on the situation.

If no contractual relation exists between the rescuer and the injured, tort's law will apply; if, conversely, there is a contractual relation, then the provisions of law on contractual liability are applicable. The question is not rhetoric as, although the ultimate consequence will be similar (reparation of damages caused), the burden of proof is different. In torts law the victim has the burden of proof, in contractual liability the injurer has to prove that he is not liable.

Another important aspect to take into consideration is that civil liability may arise either from an action or from an omission to act. In other words, the rescuer may be liable for the damages caused by actions taken, such as the use of inappropriate means or techniques of rescue, or by omission to act, such as not trying the rescue or calling external help when it was possible to do so.

Additionally, damages may be caused to the injured – and this is certainly the most common situation – or to third parties, particularly to assets if when providing the assistance or when rescuing it may be necessary to damage some assets. Third parties suffering damages are also entitled to suitable compensation that may be claimed from the person who caused the damage, in most cases, the rescuer.

In diving incidents torts law will apply in general and contractual liability will be mostly applicable when the damages arising from the assistance or its lack are caused by the diving operator to the divers under its supervision. In what concerns "buddy teams" it is very difficult to establish a general rule. There is no case law in Portugal on this specific issue and in most of the cases it will be difficult to characterize as "contractual" the relation between "buddy teams". It is something that needs to be assessed on a case by case basis.

Portuguese law may seem to be severe when dealing with the provision of assistance: it determines the provision of assistance, punishes criminally its omission and makes the rescuer liable for damages caused to the injured person or even to third parties for damages caused by the assistance or its omission.

The equilibrium has to be found in article 200, 3 of the Portuguese Criminal Code and on article 339 of the Portuguese Civil Code dealing with "flagrant necessity" (estado de necessidade).

In general, there is no liability, criminal or civil, without guilt, being it gross fault or negligence.

Specifically in what concerns the obligation to provide assistance, the Criminal Code clearly establishes that "the failure to provide assistance shall not be punished when it may cause serious risk to the

neglecter's life or physical integrity or when, for other relevant cause, said assistance is not foreseeable". It is essential to look at the specific circumstances of the case in order to assess the capacity of the bystander to act or its level of culpability. Additionally,
article 339 of the Portuguese Civil code considers legitimate and justified damages caused to remove a higher danger or harmful situation.

Therefore we may say that in Portugal, although there is no significant case law on diving injuries, only severe offences to the rights of the injured or third parties together with a high level of culpability from the rescuer are likely to lead to significant criminal and/or civil liability.

SPAIN

An easy approach to Spanish civil law must bear in mind two aspects: the first one is the Christian heritage embedde in the law. The second one is the encoding movement that copied the French Codes on XIX century. The Spanish system is also "continental", and our Civil Code is quite similar to French, Mexican, etc. This means that sentences are not a source of law. As for other countries, the Spanish law differentiates between the civil and criminal procedures. Regarding the former, the main law is the Civil Code of 1889 (Napoleon's). The Supreme court has implemented French concepts that are used as interpretations of the original text. Only a few articles in the Code are useful for tort law and the rest are open to interpretation.

The axis for civil liability can be found in Article 1902 of Civil Code, that says: "Whoever injuries others by action or inaction, concurring fault or negligence, is binded to repair the damage caused".

For that reason, it can be said that the liability in the Spanish system is based on the concept of guilt. It is quite difficult to integrate what "guilt" is and our system uses the reference of the "good parent behaviour". What is expected from a good father is what is correct. Article 1903 of the Civil Code says: "There will be no tort when the person responsible proves he acted with as much diligence as a family father to avoid the harm".

Consequently, the action/inaction model also includes the position of the bystander. Secondly, a subjective element of negligence (or at least of diligence fault) is needed in order to apply the chain of liability. With diligence, there is no liability. Only very few cases of objective liability can be found in the Spanish law (f.e. car crash, hunting liability, damages caused by children or animals...) Also, in all the cases, a clear causality relationship should be finded between the action/ inaction and results. Finally, The only way to repair in our system is to pay.

But, damage can be economical or also moral, but there is no liability before damage; this is a clear Christian idea, and our system only indemnify after the damage. The criminal Code article 195 says "Whoever does not help an unprotected person under a patent and serious risk, in a situation where there is no risk for himself or others, shall be punished with a penalty from three to twelve months in prison. This same penalty shall apply to whoever, unable to help personally, does not urgently ask others for help. If the fortuitous accident was caused by the bystander, the penalty will be from 6 to 18 months. If the accident is due to carelessness, the prison term will be from six months to four years.

For the criminal procedures also, the main source of law is the criminal Code of 1995. This is similar to the previous one (consolidated in 1973), which also comes from the French idea of having the catalogue of crimes in only one law. According to the "Código Penal", we have also a kind of liability as result of a crime. Whoever is criminal responsible is also responsible under the civil code. There are crimes that can be perpetrated by action and inaction (case a professional lifeguard or a medical doctor who deny the necessary help). Article 196 of the Criminal Code, states: "The professional who, being in charge of

helping, denies medical assistance or prevents sanitary help, and when a serious risk to health arises from such inaction, he is punishable to the same degree mentioned in the previous article and will further be disabled professionally (…)".

So, If you are a bit afraid coming to Spain for diving and being involved in an accident scenario, you should bear in mind that in order to be held responsible NEGLIGENCE must be found in your actions. Always think as a "family father". The degree of diligence which is expected from a "good father" is again a concept requiring interpretation. Do not be afraid of that because it is always very restrictive:

- The help should not create a new risk for rescuer or any other people.
- The work expected from you should be proportional to the degree of damage involved.
- You are not supposed to be trained on medical care. Only if you are a MD or a Policeman, Fireman, etc, you are expected to help actively, in all other cases the best advice is to call them!

ITALY

There is not a direct "Good Samaritan" law in Italy as in other European countries. In reality, the "Good Samaritan Law" in Italy refers to law No. 155/03 published in the Official Gazette No. 150 from July 1, 2003 that deals with the distribution of foodstuffs for purposes of social solidarity. Italian law, rather, enforces a general obligation to provide assistance to those in dire straights while protecting those who provide such assistance from civil and/or criminal consequences for their actions, as long they adhered to normal criteria of reasonableness and predictability for the consequences of their actions.

THE GOOD SAMARITAN IN CRIMINAL LAW

According to Italian criminal law, article 593 of the criminal code entitled "Failure to Provide Emergency Assistance"
enforces a general obligation to notify Authorities if subjects are found who are objectively (such as an abandoned ten yearold) or subjectively (such as a person who is unable to take care of one's self due to illness or other causes) incapacitated. Those who break this law can be sentenced up to one year imprisonment or fined up to 2,500 euro.
Mandatory assistance must also be provided for people who are unconscious, injured or in peril. In this case, one must provide emergency assistance to the person in need or notify the Authorities. If the law is not respected one can be sentenced up to one year imprisonment or fined up to €.2,500, as in the above mentioned case.
If personal injury is the result of such negligence, the penalty is greater; if the result is death, the penalty is doubled.

Art. 593 of the criminal code – Failure to Provide Emergency Assistance.
[I]Anyone who finds an abandoned or lost child who is under the age of ten, someone who is unable to take care of his or herself due to mental or physical illness, age or other cause and does not immediately notify the Authorities is punishable by up to one year imprisonment or by a fine of up to 2.500 euro.
[II]The same penalty applies to one who finds a human body that is or seems unconscious, or a person who is injured or otherwise in danger and does not provide assistance or immediately notify the Authorities.
[III]If the negligent behaviour results in personal injury, the penalty increases; if it results in death, the penalty is doubled.

Article 189 of the legislative decree No. 285 from April, 30 1992, (highway code), foresees a yet greater penalty: from six months to three years imprisonment, if one involved in a motor vehicle accident does not assist the injured.

Art. 189 of the leg. decree No. 285 from 03/04/92, Highway Code – Behaviour in case of

accident.
1. One using the road, in case of accident however associated with one's behaviour, must stop and provide help to those who may have suffered personal injuries...
7. Anyone who is in the position referenced in comma 1, and neglects the obligation of providing necessary assistance to injured persons is sentenced from one to three years imprisonment. In addition, there shall be the suspension of driver's licence for a period of no less than a year and six months and no more than five years, in accordance with chap. II, section II, of title VI...

The dangers of criminal liability that derive from enforcing this general "duty to rescue" those who are in need of assistance are mitigated by the statutory exemptions foreseen in article 54 of the criminal code, according to which whoever commits a crime that is necessary to save oneself or other persons from danger is not punishable by law, as long as he or she did not voluntarily cause the state of danger.

Art. 54 of the criminal code – State of Necessity
[I] He who acts in order to save oneself or others from imminent danger of personal injury, danger that was not voluntarily caused, nor avoidable, as long as the action is proportional to the danger is not punishable for his or her actions.
[II] This provision does not apply to those who have a particular judicial obligation to put oneself in harms way.
[III] The provision of the first part of the aforementioned article applies even if the state of necessity is determined by a third party threat; however, in this case, he who forced the action is liable for actions taken by the threatened person.

In conclusion, even if there is no direct "Good Samaritan" law in the Italian criminal code, as there is in other legal systems, there is a generic obligation to help those in need.
Consequentially, even if there are different conditions depending on the degree of fault, capability and specific qualities of the agent, or respecting normal reasonable criteria of the consequence of one's actions, he who causes involuntary damages while trying to help someone in need is not punishable by law.

THE GOOD SAMARITAN IN CIVIL LAW
The "Good Samaritan" rule is more complex when dealing with civil suits. Italian Civil Law, in article 2045 of the civil code entitled "State of Necessity", states that he who causes damages in order to save himself or others from a state of imminent danger of personal injury shall not be liable for the damages caused, but shall rather pay a lesser indemnity as established in a court of law.

Art. 2045 of the civil code – State of Necessity
[I] When someone causes damages or injury while responding to an act of necessity to save oneself or others from imminent danger [1447], and the danger was not directly caused by that person nor was otherwise avoidable [54c.c.], the damaged or injured shall receive an indemnity [20472], which shall be decided by a judge [194 trans.; 113 c.c.p.].
The literal interpretation of art. 2045 of the civil code concludes that the "Good Samaritan" who causes damages to the assisted party, even while acting to save that person from unavoidable and imminent danger of personal injury, must pay the person who suffered damages not full compensation, but an indemnity that is established by a judge, which can be quite high. It is evident how this mandatory indemnity on behalf of the rescuer contrasts the duty to
rescue in accordance with the criminal legislation. The Civil Court of Cassation, the judicial body of the third degree in the Italian system, rigorously adheres to art. 2054 of the civil code, save rare exceptions (Civil Court of Cassation Section III Sentence 14.04.1981, No. 2238), passing numerous sentences obliging

the “Good Samaritan” to indemnify the helped subject for any suffered damages. The civil doctrine highlights two different judicial figures: needed assistance and duty to rescue. Needed assistance identifies the situation of a rescuer who provokes damages to the person he or she helps, acting under the state of necessity as stated in art. 54 of the criminal code. In this case, he who provides assistance is subject o art. 2045 of the civil code and shall pay an indemnity to the
assisted person, as established by a judge.

The duty to rescue, on the other hand, identifies the situation of a person who causes damages to another in need while respecting a specific judicial obligation in accordance with art.593 of the criminal code. In this case, the person who provides assistance, having fulfilled his or her legal duty, is not subject to art.2045 of the civil code and has no civil liability; on the contrary, he or she could abstractly sue the person he or she assisted for any damages suffered while providing such assistance.

The “Good Samaritan” in Italian legislation is obligated to provide emergency assistance to people in an evident state of danger, even if there is no specific judicial figure.
Any civil consequence becomes secondary in that if a judge were to determine that the “Good Samaritan” caused damages to the assisted subject without acting under the duty to rescue, he or she shall not have to give compensation for all damages, but only pay an indemnity determined by a judge based on the real reasons for the assistance, the circumstances of time and place, the damages that were avoided, the specific skills of the rescuer and only then the damages suffered.

As a Conclusion…

Considering the controversial approach of the main legal systems facing Europe, Even if the “Good Samaritan Law” as a legal concept, only provides a defence against torts arising from attempted rescue, in countries in which the legal system is based on the Common Law, Cases in which the Civil Law, on the contrary, imposes the Duty to Rescue, in countries in which the legal system is based on the Civil Law, These two different legal systems abide by the “Good Samaritan Law” as a universal moral duty, which is to be legally protected. Anytime the Common Law legal systems consider adding Duty to Assist in statute law. The Civil Law legal systems increasingly institute specific rules to protect the rescuer, i.e. by creating an implied contract between the rescuer and the victim, or, rather unanimously, by admitting the “Status of Necessity” as a legal defence.

ECC regulation could contribute, in the future, to unify the legal systems based on the Civil Law, but until then, the French approach of an implied contract of reciprocal assistance could be a clever solution, to protect the interests of all the diving partners. Unifying the rules could actually be one of the easiest solutions, especially when partners come from different countries, stipulating a written contract such as: “By diving all together, we reciprocally engage in assisting and rescuing those of us in need, and to be indemnified against damages we may incur”. The imposition of such a contract belongs to diving organizations and insurance companies are to cover such a risk…according to…”The Good Samaritan…contractual…Law”.

On one occasion an expert in the law stood up to say to Jesus.

Expert in the Law (E.L.): *“Teacher, what must I do to inherit eternal life?*

Jesus : *“What is written in the Law? How do you read it?”*

E.L. : *“Love the Lord your God with all your heart and with all your soul and with all your strength and with*

all your mind' and, 'Love your neighbor as yourself."

Jesus : *"You have answered correctly, Do this and you will live."*

But the expert in the law wanted to justify himself, and so he asked Jesus, *"and who is my neighbor, teacher?"*

In reply Jesus said: *"A man was going down from Jerusalem to Jericho, when he fell into the hands of robbers. They stripped him of his clothes, beat him and went away, leaving him half dead with no clothes. A priest happened to be going down the same road, and when he saw the man, and he passed by on the other side. So too, a Levite, when he came to the place and saw him, he too passed by on the other side. But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, took him to an inn and looked after him The next day he took out two silver coins and gave them to the innkeeper. 'Look after him,' he said, 'and when I return, I will reimburse you for any extra expense you may have.'" Which of these three do you think was a neighbor to the man who fell into the hands of robbers?"*

The expert in the law replied, *"The one who had mercy on him."*

Jesus told him, *"Go and do likewise"*.