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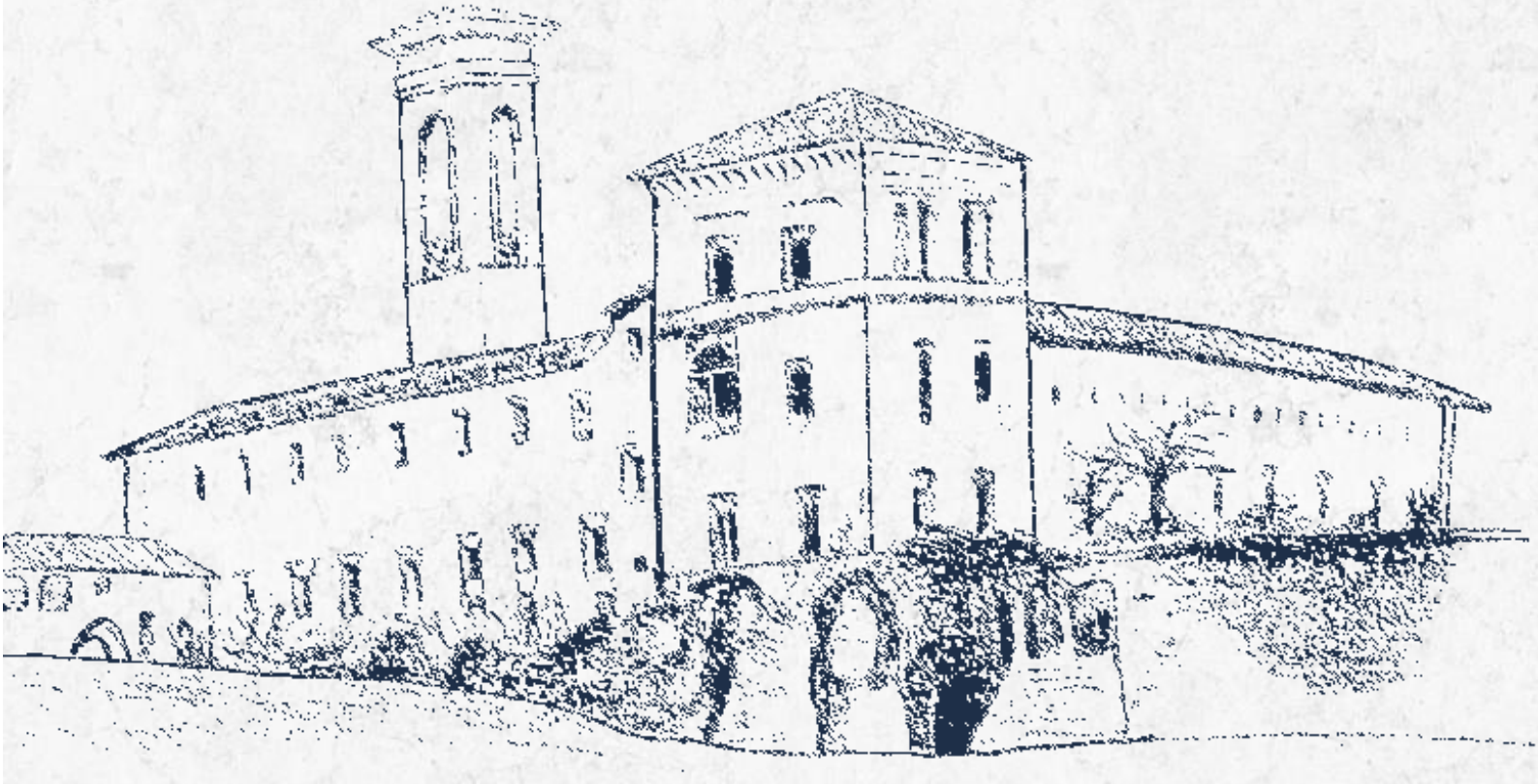

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What Reasonable Accommodation at Work is—and is not: Reflections on a Recent CJEU Judgment Concerning Italian Law

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Abstract. This article examines the evolving notion of reasonable accommodation at work under European Union law, with the aim of contributing to a clearer definition of its scope and limits. While reasonable accommodation has become a central instrument of disability equality in employment, its boundaries remain fluid and contested, particularly where accommodation intersects with job retention, sickness absence, and the continuity of the employment relationship.

The article addresses a specific legal dilemma that has not yet been fully explored in a systematic manner: whether the suspension of work performance and prolonged absence from work may qualify as reasonable accommodation for workers with disabilities. From a methodological perspective, the analysis is grounded in Directive 2000/78/EC and in the case law of the Court of Justice of the European Union, and is complemented by a case study of the Italian legal system, where extensive

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and sometimes divergent judicial approaches have developed in relation to sickness leave and dismissal for incapacity.
Against this background, the article focuses on the recent *Pauni* judgment (Case C-5/24), examining its reasoning and implications for the construction of reasonable accommodation under EU law. It argues that the Court's approach supports an interpretation of reasonable accommodation as an instrument aimed at enabling participation in professional life, rather than legitimising the indefinite or quasi-indefinite suspension of work performance.
The originality of the article lies in highlighting the normative and systemic significance of the *Pauni* judgment in clarifying what reasonable accommodation at work is—and, crucially, what it is not—within contemporary European labour law.

Keywords: *Reasonable accommodation; Disability; Sick leave; Return to work; Inclusion.*

1. Introduction

Disability has long been recognised as a structural factor of disadvantage in access to, and participation in, the labour market[1]. Persons with disabilities are disproportionately exposed to barriers affecting employability and job retention, including health-related limitations, inaccessible working environments, rigid organisational models, and persistent social stigma. These factors do not operate solely at the point of labour market entry, but continue to shape employment trajectories over time, increasing the risk of unstable employment, prolonged absences, and premature exit from work. As a result, disability remains closely associated with reduced and discontinuous labour market attachment across different economic cycles and welfare regimes.
Empirical evidence at the European level confirms the persistence of this disadvantage. Across the European Union, the employment rate of persons with disabilities is consistently and significantly lower than that of persons without disabilities, with a gap of approximately 20–25 percentage points[2]. Moreover, persons with disabilities are over-represented in part-time and temporary employment and face higher risks of labour market

[1] A. O'REILLY, *The Right to Decent Work of Persons with Disabilities*, IFP/Skills Working Paper No. 14, ILO, 2003.
[2] EUROFOUND, *Disability and labour market integration: Policy trends and support in EU Member States*, Luxembourg, 2021.

exit following periods of sickness or reduced work capacity. These data suggest that the core challenge does not lie exclusively in access to employment, but increasingly in the ability to remain in work on a stable and continuous basis.

Against this background, European and international legal frameworks have progressively developed protections aimed at ensuring equal treatment and combating discrimination on the ground of disability. At EU level, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation, explicitly recognising disability as a protected ground. At the international level, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) reinforces this approach by framing access to employment as a fundamental right and by promoting a shift from formal equality towards substantive inclusion in working life.

Within this normative architecture, reasonable accommodation has emerged as a pivotal legal instrument[3]. Article 5 of Directive 2000/78/EC requires employers to take 'appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment', unless such measures would impose a 'disproportionate burden'. This formulation deliberately combines openness and limitation. On the one hand, the Directive refrains from exhaustively defining the content of accommodation, referring instead to a non-exhaustive range of possible adjustments; on the other hand, it leaves significant discretion to Member States in determining the concrete scope, conditions, and limits of the obligation, subject to judicial review and compliance with EU law. As a result, the duty to provide reasonable accommodation operates within a multilevel framework in which EU law sets minimum standards, while national legal systems retain a margin of manoeuvre in shaping its practical application.

The centrality of reasonable accommodation reflects the recognition that disability-related disadvantage cannot be adequately addressed through equal treatment alone. Accommodation is designed to respond to individual and situational barriers by adapting working conditions, organisation, and practices, thereby enabling persons with disabilities to perform and develop within an existing employment relationship. This

[3] R. BLANPAIN, F. HENDRICKX (eds.), *Reasonable Accomodotation in the Modern Workplace. Potential and Limits of the Integrative Logics of Labour Law*, BCLR, Wolters Kluwer, 2016; A. LAWSON, *Reasonable accommodation law in Europe: Where now and where next*, in C. O'CINNEIDE, J. RINGELHEIM, I. SOLANKE, *European Anti-Discrimination Law*, Edward Elgar, 2025, pp. 209-228.

focus is particularly significant because exclusion frequently materialises not at the moment of recruitment, but through difficulties in sustaining employment over time. Reasonable accommodation thus functions at the intersection between anti-discrimination law and labour law, addressing both access to work and, crucially, job retention and continuity.

At the same time, the legal notion of reasonable accommodation remains inherently dynamic. Its boundaries are neither fixed nor self-evident, and its content is continuously shaped through legislative choices, administrative practices, and judicial interpretation. The concepts of 'appropriateness' and 'disproportionate burden' introduce a degree of flexibility that, while necessary, also renders the perimeter of the obligation fluid and, at times, uncertain. It is precisely within this space of indeterminacy that divergent national approaches and interpretative tensions have emerged.

The aim of this article is to contribute to a clearer delineation of what reasonable accommodation at work is—and what it is not—under European Union law. To this end, the analysis combines a case study of the Italian legal system, where extensive case law has developed around the limits of accommodation and job retention (Section 3), with an examination of the most recent developments in the jurisprudence of the Court of Justice of the European Union (Section 4). Through this approach, the article seeks to shed light on the evolving contours of reasonable accommodation and to assess how its function is being recalibrated within contemporary European labour law.

2. What is Reasonable Accommodation at Work?

Within the framework outlined above, reasonable accommodation has developed as a key operational concept of disability equality in employment, characterised by flexibility and an open-ended normative structure. Rather than being defined through a closed list of measures, accommodation functions as a relational obligation that emerges from the interaction between an individual worker's disability and the concrete organisation of work. Its content is therefore determined on a case-by-case basis, taking into account both the specific barriers encountered by the worker and the structural features of the workplace.

Three elements are generally recognised as central to the operation of reasonable accommodation. First, accommodation is individualised and resists abstract standardisation. Secondly, it is widely conceived as a collaborative process, requiring dialogue and good-faith engagement between employer and employee in order to identify effective solutions.

Thirdly, accommodation is framed by the principle of proportionality, which requires an assessment of whether the proposed measures are suitable and necessary to enable work participation, and whether they impose a disproportionate burden on the employer. Reasonable accommodation thus does not amount to an unlimited obligation, but rather to a contextual duty shaped by necessity, adequacy, and balance.

These features also explain the structural difficulties surrounding the concept. Assessing the reasonableness of accommodation inevitably involves a balancing of competing interests between the worker's right to equality and inclusion in professional life and the employer's interests in organisational autonomy, efficiency, and cost control. EU law deliberately refrains from providing rigid benchmarks or quantitative thresholds defining the material extent of the duty, thereby leaving significant discretion to national courts and adjudicatory bodies. This indeterminacy has fuelled concerns about legal certainty and, in some strands of the literature, about the compatibility of reasonable accommodation with freedom of contract and with traditional private law principles governing the employment relationship[4].

Recent guidance at EU level has sought to provide greater coherence without undermining the inherently flexible nature of the concept[5]. The European Commission has emphasised that reasonable accommodation measures should be timely, personalised, and oriented towards the effective enablement of work performance. From this perspective, accommodation may include assistive technologies; the physical and digital adaptation of the workplace; access to personal assistance services; flexible working-time arrangements; and telework or hybrid working solutions, provided that such arrangements are not imposed unilaterally and do not produce exclusionary effects. The reorganisation of tasks, allowing workers to perform duties compatible with their functional capacities, likewise reflects the enabling rationale of accommodation. What unites these measures is their functional orientation: they are designed to remove barriers arising from the interaction between individual conditions and work organisation, with the aim of achieving equality through effective participation.

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[4] K. KARJALAINEN, M. YLHÄINEN, *On the obligation to make reasonable accommodation for an employee with a disability*, in *European Labour Law Journal*, 2021, 12, pp. 547-563

[5] EUROPEAN COMMISSION: DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION, *Reasonable accommodation at work – Guidelines and good practices*, Pubblications Office of the European Union, 2023.

The case law of the Court of Justice of the European Union has progressively consolidated this understanding. In *HK Danmark* (Joined Cases C-335/11 and C-337/11), the Court recognised the reduction of working time as a form of reasonable accommodation where it enables a worker with a disability to retain employment and perform essential job functions. In *Commission v Italy* (Case C-312/11), it clarified that technical and environmental adaptations constitute an individualised legal obligation and cannot be made conditional upon employer discretion or economic incentives. More recently, in *J.M.A.R. v Ca Na Negreta* (Case C-631/22), the Court held that EU law precludes national rules allowing for automatic dismissal on grounds of disability without a prior assessment of possible accommodation measures or internal reassignment. Taken together, these judgments articulate a dynamic and functional conception of reasonable accommodation, centred on adapting working conditions to the worker rather than excluding the worker from work.

Comparative empirical evidence from national jurisdictions broadly confirms this orientation[6]. Across Member States, accommodation is predominantly conceived as an adjustment of working conditions, tasks, working time, or organisational arrangements, rather than as a suspension of the employment relationship.

At the same time, this body of practice reveals persistent uncertainty at the margins of the concept, particularly where accommodation approaches the boundary between the adaptation of work performance and relief from work obligations. It is within this zone of indeterminacy that the limits of reasonable accommodation continue to be shaped through judicial interpretation and legal debate.

3. Reasonable Accommodation and Sickness Absence: The Italian Case Law on the *Periodo di Comporto*

The analysis conducted so far has shown that, under EU law and in comparative perspective, reasonable accommodation is predominantly conceived as an enabling mechanism aimed at adapting work performance and working conditions in order to sustain continued participation in employment. Against this background, national legal systems provide a particularly fertile ground for exploring the outer limits of the concept,

[6] D. MCGRATH, M. O'SULLIVAN, *What is Reasonable? The Operation of 'Reasonable Accommodation' and 'Disability' Provisions Under The Employment Equality Acts. 1998-2015*, in *Irish Journal of Management*, 2022, 41, 1, pp. 37-51; EQUINET, *Case law compendium on reasonable accommodation for persons with disabilities*, 2021.

especially where accommodation intersects with sickness absence and job retention.

In Italy, this interaction has given rise to a notably expansive judicial approach. While some commentators have warned that the proportionality-based assessment inherent in reasonable accommodation might encourage overly defensive interpretations and allow employers to elude their obligations[7], Italian courts have moved in the opposite direction. In the absence of detailed legislative guidance, case law has progressively extended the reach of reasonable accommodation in order to strengthen the protection of workers with disabilities, particularly in situations involving dismissal following prolonged sickness absence[8].

From the perspective of international scholarship on disability inclusion, the Italian experience is of particular interest for two reasons. First, it provides an opportunity to reassess which types of adjustments may realistically fall within the scope of reasonable accommodation when the core issue is not access to work but the continuation of the employment relationship. Secondly, it is precisely from Italian law that the most recent judgment of the Court of Justice of the European Union on reasonable accommodation, delivered in September 2025, originated—an issue to which this article will return in Section 4.

Italian case law has consolidated an approach according to which, before dismissing a worker for exceeding the *periodo di comporto*, the employer is under a duty to ascertain whether the absences are connected to a condition of disability[9]. This preliminary inquiry is deemed necessary in order to identify 'reasonable adjustments' capable of avoiding termination of the employment relationship. According to the Supreme Court, such

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[7] A. O'NEAL, *Accommodating 'Reasonable Accommodation': Encouraging Liabilit Evasion over Employment Integration*, in . BLANPAIN, F. HENDRICKX (eds.), *Reasonable Accomodotation in the Modern Workplace. Potential and Limits of the Integrative Logics of Labour Law*, BCLR, Wolters Kluwer, 2016, pp. 73-88.

[8] The literature on reasonable accommodation in Italy is extensive. For an initial overview, see, inter alia: O. BONARDI, *Le soluzioni ragionevoli per i disabili come tecnica di prevenzione delle discriminazioni*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2024, no. 3, pp. 376–396; P. LAMBERTUCCI, *Nuove frontiere della disabilità: soggetti protetti e accomodamenti ragionevoli*, in *Diritti Lavori Mercati*, 2024, no. 2, pp. 237–261; D. GAROFALO, *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, in *Argomenti di Diritto del Lavoro*, 2019, no. 6, pp. 1211–1247; C. SPINELLI, *La sfida degli 'accomodamenti ragionevoli' per i lavoratori disabili dopo il 'Jobs Act'*, in *Diritti Lavori Mercati*, 2017, no. 1, pp. 39–59.

[9] See, inter alia: V. FILÌ, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*, in *Giurisprudenza Italiana,* 2023, n. 10, pp. 2145-2150; E. DAGNINO, *Comporto, disabilità e "disclosure": note a margine di una "querelle" giurisprudenziale*, in *Argomenti di Diritto del Lavoro*, 2023, no. 1, pp. 241-254.

adjustments may include, 'by way of example', both the 'extension of the *periodo di comporto*' and the 'exclusion from the *periodo di comporto* of periods of sickness related to the worker's disability'.

To appreciate the implications of this line of reasoning, it is necessary briefly to clarify the function of the *periodo di comporto* in the Italian legal system. The *periodo di comporto* denotes the maximum duration of paid sick leave during which the worker is protected against dismissal. Once this period—typically determined by collective bargaining—has been exceeded, the employer may lawfully terminate the employment relationship, irrespective of fault. The concept thus performs a general regulatory function, establishing an ex ante balance between the worker's right to health protection and income continuity, on the one hand, and the employer's interest in organisational certainty and productivity, on the other.

The judicial orientation described above, however, calls for critical reflection on at least three grounds.

First, the argument that conditions the lawfulness of dismissal for exceeding the *periodo di comporto* upon the extension of the period itself appears to entail a circular logic: the duration of paid sick leave is prolonged precisely in order to prevent its exhaustion, thereby neutralising the very function of the concept. This reasoning also sits uneasily with earlier Supreme Court case law on dismissal for supervening unfitness, where termination has been deemed lawful provided that the employer demonstrates a 'diligent and reasonably required effort' to identify organisational solutions capable of avoiding dismissal. An asymmetry would thus arise—without clear normative justification—whereby dismissal for exceeding the *periodo di comporto* becomes more onerous than dismissal for permanent unfitness, even where the employer proves the impracticability of alternative organisational arrangements.

Secondly, further doubts emerge when this Italian approach is assessed in light of the consolidated orientations of the Court of Justice of the European Union and of national courts discussed in the previous section. As noted above, reasonable accommodation has consistently been framed as an adaptation of work performance and working conditions, rather than as the mere tolerance of prolonged absence from work. Treating the extension of the *periodo di comporto* or the exclusion of disability-related absences as reasonable accommodation risks shifting the focus of the concept away from work adjustment and towards the suspension of the employment obligation, thereby stretching it beyond its enabling rationale.

Thirdly, and more fundamentally, the individualised nature of reasonable accommodation stands in structural tension with the logic underpinning

the *periodo di comporto*. Reasonable accommodation presupposes a concrete and contextual assessment: it requires dialogue between employer and worker, the exploration of alternative solutions, and a proportionate balancing of competing interests in the specific circumstances of the case. The *periodo di comporto*, by contrast, embodies a general and abstract balancing exercise, carried out ex ante by the legislator and, above all, by collective bargaining. Through this mechanism, the social partners determine in advance—at a systemic and policy-oriented level—the acceptable trade-off between health protection and productive needs for a given sector or category of workers. Assimilating this ex ante, collective, and uniform assessment to an ex post, individualised evaluation of reasonable accommodation risks conflating two distinct regulatory logics.

This tension has been explicitly acknowledged in recent appellate case law. In a judgment of the Bologna Court of Appeal[10], the court held that the mere tolerance of an exceptionally high number of sickness absences—amounting to 587 days—could not qualify as reasonable accommodation. The court emphasised that dismissing the worker only after such a prolonged period of absence did not amount to accommodation, in so far as no effort had been made to identify alternative solutions. The employer, the court noted, had confined itself to a rigid and impersonal application of the *periodo di comporto*, without engaging in any genuine dialogue aimed at assessing expectations, task reallocation, working-time reduction, or other proportionate options.

Ultimately, equating the extension of the *periodo di comporto* with reasonable accommodation appears conceptually inconsistent. The former is a general, collectively negotiated instrument designed to govern sickness absence through uniform rules; the latter is a personalised and situational mechanism aimed at removing specific barriers to participation in work. Blurring this distinction risks undermining the internal coherence of both institutions and obscuring the proper boundaries of reasonable accommodation at work.

4. The *Pauni* Judgment (Case C-5/24): Reasonable Accommodation and the Proceduralisation of Dismissal

The interpretative tensions highlighted in the previous section came before the Court of Justice of the European Union in *Pauni*, following a preliminary reference submitted by the Tribunal of Ravenna in January

[10] Corte App. Bologna, sez. lav., 15 aprile 2025, n. 169.

2024[11]. The referring court was confronted with a dispute concerning the dismissal of a worker after prolonged sickness absence and questioned whether the application of a single, undifferentiated sickness-absence regime, laid down in a sectoral collective agreement, was compatible with Directive 2000/78/EC, particularly in light of the duty to provide reasonable accommodation. At the core of the reference lay the concern that a formally neutral rule on sickness absence might, in practice, place workers with disabilities at a particular disadvantage and operate as a substitute for the individualised assessment required under EU anti-discrimination law.

In its judgment of 11 September 2025, the Court of Justice articulated a nuanced position that is of central relevance for the present analysis. The Court rejected the view that EU law requires Member States to establish a distinct or automatically extended sickness-absence regime for workers with disabilities. At the same time, it made clear that the mere existence of a general—and even generous—job-protection period cannot, in itself, satisfy the requirements of Article 5 of Directive 2000/78/EC. A uniform sickness-absence regime is not *per se* incompatible with EU law; however, its compatibility is conditional and cannot be assessed in the abstract.

The Court identified two cumulative conditions for such a regime to comply with EU equality law. First, the national or collectively agreed system must pursue a legitimate social policy objective and must not go beyond what is necessary to achieve that aim. Secondly—and this point is decisive—the regime must not hinder the effective application of reasonable accommodation. In particular, the Court stressed that rules on sickness absence must not operate in such a way as to relieve employers of their obligation to assess, in the individual case, whether appropriate measures could enable the worker with a disability to continue participating in professional life. The existence of a predetermined period of job protection cannot therefore replace, nor pre-empt, the concrete and contextual evaluation of accommodation measures required by EU law.

Read in this light, *Pauni* draws a clear conceptual and functional distinction between sickness-absence regimes and reasonable accommodation. The *periodo di comporto*—as a general, abstract instrument of labour law—cannot be reclassified as a form of reasonable accommodation. Its function is to regulate, *ex ante* and uniformly, the

[11] O. BONARDI, *Le soluzioni ragionevoli per i disabili come tecnica di prevenzione delle discriminazioni*, cit., pp. 386-391; A. MARESCA, *Disabilità e licenziamento per superamento del periodo di comporto*, in *Lavori Diritti Europa*, 2024, n. 2.

consequences of sickness-related absence within the employment relationship. Reasonable accommodation, by contrast, is an individualised and enabling mechanism aimed at removing specific barriers that prevent a worker with a long-term impairment from performing work on an equal basis with others. The Court thus implicitly rejects the equation, sometimes advanced in national case law, between the extension or application of the sickness-absence period and the fulfilment of the duty to accommodate.

More importantly, *Pauni* contributes to what may be described as a proceduralisation of the dismissal of workers with disabilities. Where dismissal is grounded in the exceeding of a sickness-absence threshold, EU law requires that termination be preceded by a genuine and documented assessment of reasonable accommodation. Before relying on the exhaustion of the sickness-absence period, the employer must verify whether any reasonable measure—such as adjustments to working time, duties, organisation, or modalities of performance—could enable the worker to remain in or return to employment, unless such measures would impose a disproportionate burden. Only where this assessment has been duly carried out and has yielded a negative outcome can dismissal be regarded as compatible with Directive 2000/78/EC.

From this perspective, the *periodo di comporto* does not operate as an autonomous justification for dismissal, but as a residual mechanism that becomes relevant only after the accommodation inquiry has been exhausted. The legality of termination therefore hinges not on the formal application of a temporal threshold, but on the prior fulfilment of a procedural obligation to explore reasonable accommodation. By anchoring dismissal to this sequence of assessments, the Court reinforces a model of disability protection centred on participation rather than absence and confirms that EU anti-discrimination law does not protect inactivity as such, but the effective inclusion of persons with disabilities in working life wherever this remains reasonably possible.

5. Conclusions

This article has sought to contribute to the clarification of what reasonable accommodation at work is—and, equally importantly, what it is not—within the framework of EU disability equality law. By focusing on the relationship between reasonable accommodation and sickness-absence regimes, and by using the Italian legal system as a case study, the analysis has addressed a question that is increasingly central in contemporary labour law: whether the suspension of work performance

and prolonged absence from work can be subsumed under the notion of reasonable accommodation.

The comparative and EU-level materials examined show a relatively stable core understanding of reasonable accommodation as an enabling and participation-oriented mechanism, aimed at adapting work performance and working conditions so as to sustain continued inclusion in professional life. Both EU-level guidance and the case law of the Court of Justice consistently frame accommodation as a set of measures designed to remove barriers arising from the interaction between individual impairments and work organisation, rather than as instruments that merely tolerate or extend absence from work.

The Italian jurisprudence on dismissal for exceeding the *periodo di comporto* illustrates, however, how this conceptual boundary may become blurred in practice. In an effort to enhance protection for workers with disabilities, national courts have at times expanded the notion of reasonable accommodation to include the extension or recalculation of sickness-absence thresholds. While motivated by inclusionary concerns, this approach risks conflating two distinct regulatory logics: a general, abstract balancing of interests embedded in sickness-absence regimes, and the individualised, case-specific assessment that characterises reasonable accommodation.

The *Pauni* judgment marks a significant turning point in this respect. Without calling into question the legitimacy of general sickness-absence schemes, the Court of Justice has made clear that such regimes cannot operate as functional substitutes for the duty to provide reasonable accommodation. The decision reinforces a procedural model in which the dismissal of a worker with a disability—when grounded in prolonged absence—must be preceded by a genuine and documented assessment of reasonable accommodation. Only after it has been established that no reasonable and proportionate measures could enable continued participation in work does the application of sickness-absence thresholds become legally decisive.

From this perspective, *Pauni* contributes to a clearer delineation of the perimeter of reasonable accommodation: it confirms that accommodation is not concerned with protecting absence as such, but with enabling presence wherever reasonably possible. The obligation imposed on employers is not to guarantee employment indefinitely, but to engage in a meaningful process of adaptation aimed at preserving work participation before resorting to dismissal.

More broadly, the analysis underscores the dynamic and evolving nature of reasonable accommodation as a legal concept. Its contours are shaped

through the interaction between EU law, national legal systems, and judicial interpretation, and remain inherently open-ended. The Italian case study demonstrates both the risks of overextension and the corrective role played by EU jurisprudence in reorienting national practices towards the core participatory rationale of disability equality law. Following the *Pauni* judgment, the referring court ultimately upheld the dismissal, confirming that EU law does not guarantee job retention as such, but conditions the lawfulness of termination on the prior assessment of reasonable accommodation.

In this sense, the contribution of *Pauni* lies not in redefining reasonable accommodation in abstract terms, but in reaffirming its function as a concrete, individualised, and process-based instrument of inclusion in working life.

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