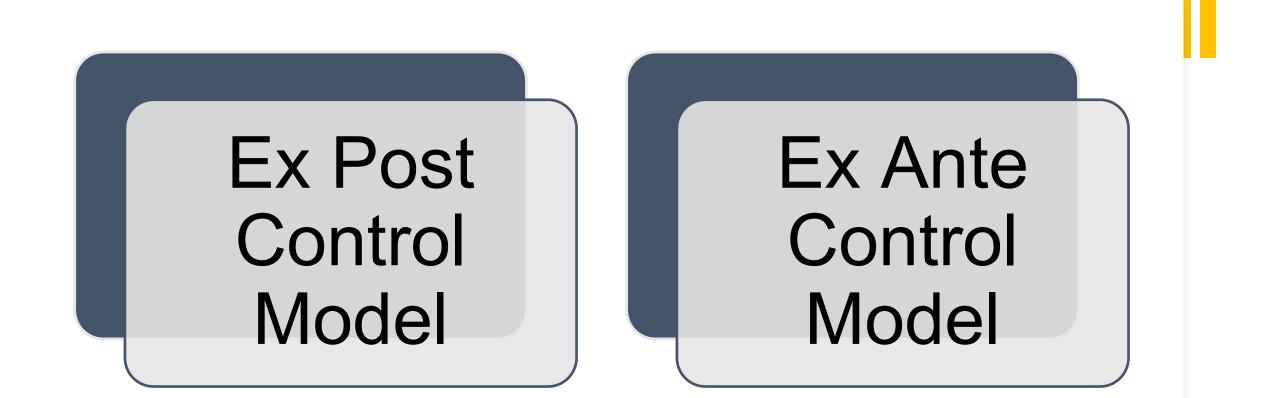
EIO in Italy – Two issuing models



Ex Post Control Issuing Model

Issuing by a Public Prosecutor, independent from the executive branch

Ex post control by a Judge

Seizure in the investigation phase: <u>ex</u> post control Issuing by the **Public Prosecutor**

«Re-examination» by the Tribunal

Who: Suspect, Lawyer, Third Person

What: *Possibility to challenge the substative reason for issuing* Search without seizure in the investigation phase: ex post control

Issuing by the **Public Prosecutor**

«**Opposition**» in front of the Preliminary Investigation Judge (new art. 252 bis code crim. proc.)

Who: Suspect, Lawyer, Third Person

What: Possibility to challenge the substantive reason for issuing

Ex Ante Control Issuing Model **Issuing** by a Judge, upon request by a Public Prosecutor independent from the executive branch

Possibility to challenge in trial the validity of the evidence collected

Interceptions of Communications

Collection of traffic data

Collection of bodily samples

Issuing by the **Preliminary Investigation Judge**, upon request of the **Public Prosecutor**

Declaration in trial of the invalidity of evidence unlawfully collected

Who: Defendant, Prosecutor

What: Possibility to challenge the substantive reason for issuing

Compatibility with Gavanozov

Ex Post Control Model (searches and seizures): compatible with Gavanozov?

Ex Ante Control Model (interceptions, traffic data, body samples): not compatible with Gavanozov?

Ambiguity of Gavanozov

Hint for the necessity of a specific ex post control:

§ 33: «the persons concerned by such investigative measures must have **appropriate legal remedies** enabling them, first, to contest the need for, and lawfulness of, those measures and, second, to request appropriate redress if those measures have been unlawfully ordered or carried out»

Ambiguity of Gavanozov

Hint for the sufficiency of an ex ante control + possibility to challenge the validity of the evidence collected in trial:

§ 34: «That interpretation of Art. 47 of the Charter [right to an effective remedy] **corresponds** to that of Article 13 ECHR.

It follows from the case-law of the ECtHR that, the persons concerned by searches and seizures must be able to **access a procedure** enabling them to contest the need for, and lawfulness of, the searches and seizures carried out and to obtain appropriate redress if those measures have been unlawfully ordered or carried out»