

EIO in Italy – Two issuing models

**Ex Post
Control
Model**

**Ex Ante
Control
Model**

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: ex
post control**

Issuing by the **Public
Prosecutor**

«**Re-examination**» by the
Tribunal

*Who: Suspect, Lawyer, Third
Person*

*What: Possibility to challenge
the substantive 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»