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Banking Reforms in Algeria: The Central Role of the Monetary and Banking Council and Banking Committee Under New Legislation

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Abstract:

Economic crises ensued due to plummeting oil prices, prompting a gradual withdrawal of the state from economic activities and a shift in its role from interventionist to regulatory, manifested In the creation of entities such as autonomous regulatory agencies.

The Credit and Monetary Council Authority is an independent administrative authority in the banking sector, serving as a regulatory body to lay the groundwork for this sector and regulate monetary policy. Additionally, The Banking Committee functions as a regulatory body, monitoring the compliance of banks, financial organizations, and other entities subject to applicable legislative and regulatory provisions. Our study aims to elucidate the significance of these two bodies under Law 23-09, encompassing monetary and banking legislation, by outlining their composition, powers, and operational mechanisms as crucial instruments for economic regulation and protection.

Keywords: Monetary and Banking Council; Banking Committee; Algerian Central Bank; Economic Governance.

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INTRODUCTION

To mitigate the economic downturn precipitated by the decline in oil prices, Algeria embraced a liberal system, aiming for a gradual withdrawal from the economic sphere. This transition marked a shift from an intervening state to a regulatory one, epitomized by Executive Decree No 88/201, issued on 18/10/1988, which nullified all regulatory provisions allowing socialist institutions to monopolize specific economic activities and trade. This shift was legally established by incorporating principles of administrative impartiality and economic freedom, as outlined in the constitutions of 1989 and 1996.

However, this withdrawal from economic activity was not absolute; the Algerian state, represented by its administration, retained some mechanisms to regulate and supervise it. This was done to protect the public interest and consider the necessities of public facilities. This regulatory framework was manifested by establishing new bodies known as independent administrative authorities. Notably, in the banking sector, the Monetary and Credit Council, established under Law 90-10 related to monetary and credit affairs, serves as a regulatory body to control monetary policy to align with global economic developments. Additionally, the Banking Committee, established under the abovementioned law, acts as a supervisory body tasked with ensuring compliance with laws, monitoring violations, and enforcing disciplinary measures.

With the enactment of Law 23-09, which repealed Law 03-11 concerning monetary In the realm of banking and financial matters, the focus is on the Monetary and Credit system. The Council rebranded and is now known as the Monetary and Banking Council, while the Banking Committee retained its original name. Unchanged Thus, it is imperative to acquaint ourselves with the new provisions of this law.

These two bodies are poised to play a prominent and crucial role in regulating the national economy, especially with the issuance of Law 23-09, which confers upon each Some extra powers among them.

The scrutiny of the Monetary and Banking Council and the Banking Committee is quite important, given their Play crucial functions in overseeing economic regulation and ensuring the operational integrity of the banking system. The goal is to clarify or make clear the revisions introduced by Law 23-09 regarding these two bodies, especially the powers conferred upon each.

It is essential to clarify that the latest provisions of Law 23-09 pertain to the regulation of the Council and the Committee.

To achieve the desired objective and address the previously listed issue, a suitable descriptive method was employed to gather information and definitions pertinent to this study, along with an appropriate analytical method to analyze and present the conceptual framework of these two bodies, their composition, powers, and operational procedures.

1-The Monetary and Banking Council

This study encompasses several points, which are included in that. The initial section comprehensively overviews the Monetary and Banking Council's definition, organization, and functioning. About the second component, our focus is on clarifying the specific powers assigned to the Monetary and Credit Council.

1-1-Council's Organisational Structure

The initial remark concerns the change in language from the Monetary and Credit Council to the Monetary and Banking Council. Therefore, this section will first define the Monetary and Banking Council. Secondly, we will discuss its membership composition and, thirdly, the operational processes it follows.

1-1-1-A Concise Portrayal of the Council

The Financial and Credit Council is an independent administrative authority in the banking sector (Qlouche, 2016/2017, p. 21). Referring to Law No. 03-11, which amends and supplements Law No. 90-10 concerning monetary and credit affairs, the legislator must provide a specific definition or text to delineate the Monetary and Credit Council concept. Instead, it only defined its composition and powers. (Order, 2003)

With the enactment of Law 23-09, encompassing monetary and banking legislation, which repealed Law No. 03-11 concerning monetary and credit affairs, the council's name The transition was made from the Monetary and Credit Council to the Monetary and Banking Council. Nevertheless, the legislative body did not define the council. Within this law. Instead, it defined its composition in Article 61 of Law 23-09 (Law 23-09, encompassing monetary and banking legislation, 2023) and its powers in Article 64 within the same legislation. (Law 23-09, 2023)

1-1-2-The Council's membership makeup

The council's makeup saw alterations. As stipulated in Article 61, It now encompasses individuals who are members of the Board of Directors of the National Bank of Algeria.

-Individuals chosen and assigned a certain role for their competence in economic and monetary matters.

- An individual chosen for their expertise in Islamic banking.

- A cadre from the Bank of Algeria holding a position equivalent to Chief Executive Officer.

1-1-2-1-Members of the Board of Directors of the Bank of Algeria

The Bank of Algeria's Board of Directors comprises the Governor, who serves as the Chairman, as well as their deputies, and four employees of the highest rank appointed by presidential decree based on their competence in economic and financial matters. In their absence or vacancy, they are replaced by deputies appointed under identical circumstances. (Law 23-09, 2023)

The Governor supervises the Bank of Algeria, presides over the Banking Committee, and heads the Council. Concerning his deputies, they substitute for him in case of his absence, especially during meetings. Additionally, the four recently added figures, due to their expertise in the economic and financial sectors and their replacements from the same divisions as the high-ranking employees, replace them in case of their absence or vacancy in their positions. (Araab, 2006/2007,

pp. 9-10) It is unsurprising for a body like the Monetary and Banking Council to require expertise in economic and financial fields, and it is natural to have individuals like them in its composition. (Ltarsh, p. 62)

1-1-2-2-An individual selected for their competence in economic and monetary matters

Executive Order No. 03-11 concerning Fiscal and Credit Affairs added two members based on their economic and monetary expertise. (Order, concerning Monetary and Credit Affairs, 2003) However, with the enactment of Law 23-09, which repealed the previous law, only one member is selected based on their competence in economic and monetary matters, appointed by presidential decree. (Law 23-09, encompassing monetary and banking legislation, 2023) Adding them to the council's composition is to broaden the scope of contributors and ensure more transparency in the banking sector. (Nacima, 2009/2010, p. 51)

1-1-2-3-An individual selected for their expertise in Islamic banking

Law 23-09 added a member to the Monetary and Banking Council based on their expertise in Islamic banking, a recent addition unique to this law, appointed by presidential decree. (Law 23-09, encompassing monetary and banking legislation, 2023) According to Article 02 of Regulation No. 2020-02, which details the banking activities associated with Islamic banking and the principles followed by banks and financial organizations, every banking transaction that pertains to Islamic banking is covered. Banking involves any financial transaction that does not involve collecting or paying interest. (Regulation No. 2020-02, 2020)

1-1-2-4-A cadre from the Bank of Algeria with at least a General Manager rank

Likewise, Law 23-09 added another member to the Council as the Chief Executive Officer. The rationale for adding them Being a member entails receiving important recognition for monetary policy and facilitating effective banking operations. The latter is indicated by presidential decree. (Law

23-09, 2023)

1-1-3-Procedural Functions of the Council

The Central Bank Governor is responsible for chairing the council, organizing meetings, and setting its agenda. The council determines its internal regulations. Decisions are made through a voting process in which a simple majority determines the outcome. If there is an equal number of votes on both sides, the vote of the Chairman will be the deciding factor.

The council holds at least four (4) regular sessions per year and can be convened by initiative of its Chairman or two members whenever necessary. In such instances, they formulate the agenda for the council, and a minimum of five members must attend council meetings. Members can only delegate their vote.

Delegating representation At its meetings, the council decides on the compensation for members' absences and the criteria governing expenditures. Incurred by its members are reimbursed. (Law 23-09, encompassing monetary and banking legislation, 2023)

The council is provided with a general secretariat, with its powers and organization determined by the Bank's Board of Directors, based on a Monetary and Banking Council proposal. (Talib, 2021, p. 8)

A form of independence is granting the council the authority to establish its internal regulations independently (Law 23-09, encompassing monetary and banking legislation, 2023) without requiring approval from the executive authority.

Council members and any individuals the council may call upon for any reason are bound as outlined by the responsibilities defined in Article 28 of Law 23-09. Directors of the Board are not allowed to disclose directly or indirectly any information they have accessed within the scope of their duties without violating the obligations imposed on them by law, except in cases where they are summoned to testify in a criminal case. The same responsibilities extend to any individual summoned by the Board of Directors to carry out their duties. (Law 23-09, 2023)

1-2-The Council's Regulation Framework

The council enjoys several powers as a monetary authority, which we will first discuss. Individually determined choices by the council followed.

1-2-1-The Council's Monetary Authority

Referencing Article 64 of Law 23-09, the council is vested with powers as a monetary jurisdiction over the following areas:

- Issuing money and its coverage, as outlined in this law's Articles 3 through 5

- Regulations and terms for Bank of Algeria operations, especially regarding discounting and bonds under the custody system, mortgage of public and private bonds, and operations related to precious metals and currencies.

- Setting monetary policy and supervising, monitoring, and evaluating it. For this purpose, the council defines monetary objectives, especially concerning the development of monetary and credit aggregates, specifies monetary policy tools, sets regulatory guidelines in the money marketplace, and ensures that market knowledge is shared to prevent imbalances.

- New savings and lending products, as well as banking services.

- Creating guidelines and standards for payment systems, as well as ensuring their security;

- Specifying prerequisites for bank and financial institution establishment and licencing, such as necessary capital and operational protocols for funding.

- Requirements for foreign banks and financial institutions to establish branches in Algeria.

- Precautionary standards apply to banks and financial institutions, with specific standards and regulations also applied to digital banks. And payment service providers.

- Protecting bank and financial institution customers, especially in their dealings with these customers.

Accounting standards are applied to financial institutions and banks, considering global advancements in this area. These standards are in addition to the protocols and schedules for the

distribution of statistics, accounting circumstances, and information for all parties involved, particularly for the Central Bank.

-Operational requirements for working in the banking and accounting and banking industries' consulting and brokerage divisions industries.

- Establishing exchange rate policy objectives and methods of exchange control.

- Legal regulation of exchange and exchange market regulation.

- Managing exchange reserves.

- Good practices and professional ethics applied to banks, financial institutions, independent brokers, exchange offices, and payment Providers of services.

- Conditions for accrediting independent brokers and exchange offices, particularly specifying the minimum capital requirement and the methods of its replenishment.

- Conditions for accrediting and establishing payment service providers, especially specifying the minimum capital requirement, replenishment methods, protecting their clients, and the accounting standards and rules applied to them. (Law 23-09, encompassing monetary and banking legislation, 2023)

1-2-2-Individual Decisions of the Council.

Referring back to Article 64 of Law 23-09, we find that the council can make the following individual decisions:

- Licensing banks and financial institutions, amending their articles of association, and withdrawing accreditation.

- Licensing the opening of representation offices for foreign banks.

- Transferring authority for exchange regulation.

- Decisions about the application of rules formulated by the council.

- Approval for the creation of companies offering payment services.

- Granting licences for freelance brokers and trading establishments. (Law 23-09, encompassing monetary and banking legislation, 2023)

1-2-2-1-Authorization

While the government has disengaged from direct involvement in the banking sector and has allowed for more liberal initiatives to protect specific strategic activities, the government relies on the accreditation and licensing principle to control these operations.

The Monetary and Banking Council has been permitted to issue individual decisions granting licenses, which are the first step in establishing financial and banking institutions. (Safia Ikoulil, 2013, pp. 45-46) Licenses are also granted for opening representation offices for foreign banks, payment service providers, independent brokers, and exchange offices.

1-2-2-2-Accreditation

It is granting the prerogative of prior accreditation to the Monetary and Banking Council as a regulatory agency that actively shapes the financial industry to monitor the existence of fundamental investment prerequisites in this domain. This is the second step after the licensing process, through which the Bank of Algeria can monitor the investor's compliance with existing regulations. (Aqrashah, 2013, p. 377)

2-The Banking Committee

This topic includes several points. In the first section, we shall describe the Banking Committee's description and membership. Regarding the second feature, we shall explain the Banking Committee's functions and the powers granted to it.

2-1-The Committee's Organisational Structure

This criterion requires that we first examine the committee's terminology. Then, we will discuss its membership.

2-1-1-Definition of the Banking Committee

There is a jurisprudential difference regarding the nature of this committee, as the legislator needed to define it. Some argue that it is an independent administrative authority due to its actions, as the decisions it issues fall within The general authority's purview and are accepted by bureaucratic organizations. Conversely, though, another group considers it to have a dual nature, while the State Council considers it an administrative authority. (Shammasha, 2021, pp. 396-397)

Independent. We find that the legislator did not provide a specific definition or text to define the concept of the Banking Committee; rather, he defined its composition through Article 117 of Law 23-09 and its tasks in Article 116 of the same law. The Banking Committee is the focal point of the executive authority's oversight over all matters within the Monetary and Banking Council. It also represents its enforcement arm; therefore, the legislator endowed it with extensive powers (Jilali, 2010, p. 117), which we will make clear in the second prerequisite.

2-1-2-The Banking Committee's membership composition

In this prerequisite, we will talk about the membership makeup of the Banking Committee, as stipulated in Article 117 of Law 23-09, which is composed of:

- The Governor, serving as the Chair.
- Three (3) appointed members chosen for their banking, finance, and accounting competence.
 - A member is chosen by the President of the Council of State after consulting with the High Court of the Judiciary, and two (2) judges—one nominated by the most powerful court in the country and elected by its chairman, and the remainder appointed by the College of State—select the member.
 - Among its senior advisors, the President selects an individual for the Council of Auditors.
 - Also included is a delegate from the Minister of Finance who is at least a director. (Law 23-09, encompassing monetary and banking legislation, 2023)

The committee's composition has a collective character due to the legislator's consideration of collective formations in independent administrative authorities to achieve a continuous balance between decision-making bodies. It also has a mixed character; judicial figures are represented by two judges exercising disciplinary authority as required. Additionally, individuals with expertise in the financial, banking, and accounting fields are valued with three members, given the exceptional nature of the banking profession. (Asmaa Haqas, 2022, p. 174) In addition, two more members, one at least a

director, represent the Ministry of Finance and the other the Council of Auditors. Furthermore, the Chair is the president of the National Bank of Algeria, who is in charge of three departments and possesses sufficient knowledge of what is most suitable for the financial sector.

Individuals who are part of the committee are appointed by presidential decree for five (5) years, and Article 28 of this law applies to both the Chairman and committee members. (Law 23-09, encompassing monetary and banking legislation, 2023)

After the end of their term, within two (2) years, committee members are kept from managing or working in an institution subject to the authority or supervision of the committee or a company controlled by it. Such members cannot work as agents or consultants for such institutions or companies. The salaries of committee members are determined by executive decree and are funded by the Algerian Bank. When committee workers' terms of office expire, judges or staff members coming to their original departments receive, upon retirement or death, compensation equal to the salary of two (2) years, borne by the Bank of Algeria, if necessary. This is in addition to any other amount paid by this bank. This procedure also applies to committee members who do not take up any paid position by the state except in cases of dismissal due to gross misconduct. (Law 23-09, encompassing monetary and banking legislation, 2023)

2-2-The Jurisdictional Framework of the Banking Committee

We will first discuss the Banking Committee's procedures in this requirement before outlining its responsibilities.

2-2-1-Banking Committee discussion

In the event of a tie, the Chairman casts the decisive vote. The Committee makes decisions by majority vote. Appealing against the committee's decisions regarding appointing an interim or permanent manager and disciplinary sanctions are made to the administrative court. (Law 23-09, 2023)

The Banking Committee enjoys relative independence. From an organizational standpoint, its diverse and multi-faceted composition prevents it from being subordinate to a single entity. However, regarding its function, it operates independently from the Bank of Algeria and wields its authority without interference from the executive authority. (Lamari Walid, 2018, pp. 415-417)

2-2-1-1-Organizational Jurisdiction of the Banking Committee

The committee has organizational authority under Article 121 of Law 23-09, one of its most important mandates granted by the legislator to issue regulatory texts through which it exercises its legal and regulatory powers. (Nassigha Faisal, 2018, p. 197) This is As stated in the article, "The Committee defines the operational agenda for overseeing operations it carries out...". (Law 23-09, 2023)

2-2-1-2-Supervisory Jurisdiction of the Banking Committee

The committee also has supervisory jurisdiction under Articles 120, 121, 122, and 123 of Law 23-09. It supervises the regulated entities based on documents and on-site inspections, and it is the only authority empowered to decide regarding any violations by banks and financial institutions of the stipulations of this law and associated risk exposure systems. (Law 23-09, 2023) It carries out two types of supervision: document-based supervision (Daoud, 2011, p. 38), where banks regularly submit accounting documents to the Banking Committee, and on-site supervision (Lamari Walid, 2018, p. 418), which may be necessary for certain cases where document-based supervision may not be sufficient. The committee also determines the list, format, and deadlines for notifying documents and information it deems useful. It is also authorized to request all necessary information, evidence, and clarifications from the regulated entities; professional secrecy does not apply. (Law 23-09, 2023)

The committee may expand the scope of its investigations to the contributions and financial relationships between legal entities directly or indirectly controlled by the regulated entity and its subsidiaries. This is done within the

context of international treaties. (Law 23-09, 2023) If none of the organizations the committee oversees behaves improperly, it violates professional conduct guidelines, the committee issues a warning after allowing the management of this institution to provide justifications. (Law 23-09, 2023)

2-2-1-3-Disciplinary Jurisdiction of the Committee

By Article 126, this group also has punishment authority. Of the same law. Any entity subject to its authority that contravenes a legislative or regulatory provision related to its operations or disregards a warning may be subjected to one of the following penalties:

- Warning,
- Reprimand,
- Prohibition from carrying out certain operations or other kinds of activity limitations,
 - The temporary removal of any or all leaders using the certification or without it of an interim manager,
 - Dismissal of personnel followed by the designation of an interim manager or non-appointment,
 - Withdrawal of accreditation.

The Banking Committee also has the authority to impose financial penalties in addition to the sanctions above or instead of them, with the penalty amount being at least equal to the lowest amount of capital necessary for the entity under regulation. (Law 23-09, 2023)

In the sanctions outlined in items 4 and 5 of Article 126, an interim manager is appointed based on a decision that specifies the duration of their tenure and the conditions of their salary payment. Their tenure is terminated under the same conditions, and they are granted all necessary powers to manage the affairs of the concerned institution or its branches in Algeria and to administer them. They also have the authority to declare a payment suspension. Suppose accreditation is withdrawn from the regulated entity. In that case, it then falls under liquidation, whether it is subject to Algerian law or a branch of foreign banks and financial institutions operating in Algeria. (Law 23-09, 2023)

The committee's Chairman appoints a liquidator based on a decision after deliberation by the Banking Committee, granting them all powers of administration, management, and representation. During the liquidation period, the regulated entity must only carry out operations necessary to rectify the situation and must indicate its status as under liquidation. Additionally, it remains under the committee's oversight until the liquidation is finalized. (Law 23-09, 2023)

Any organization that participates in unauthorized operations practised by entities under liquidation is identified, and the committee appoints a liquidator

Guidelines issued by the Banking Committee determine temporary administration and liquidation modalities. (Law 23-09, 2023) It is worth noting that the committee chairman sends an annual report on banking errors, which he notifies the chief of staff. (Law 23-09, 2023)

2-2-2-The Committee's Obligations In

The Committee has several roles allocated to it, and it possesses the authority to impose disciplinary penalties under Article 116 of Law 23-09, which we clarify in the following points:

- Supervising the extent to which banks, financial institutions, independent brokers, exchange offices, and payment service providers comply with the legislative and regulatory provisions applicable assigned to them.

Examining how banks and other financial organizations are operating while maintaining the integrity of their financial positions

- Enforcing sanctions for noticed infractions and monitoring adherence to the code of behaviour for professionals.

When required, the committee examines violations committed by individuals practising activities of regulated entities without authorization. It applies disciplinary sanctions prescribed by law without prejudice to other criminal and civil proceedings.

The committee also issues guidelines and makes determinations through resolutions. (Law 23-09, 2023)

CONCLUSION

The regulatory agencies in the banking sector, including the Central Bank and the Committee, have important duties in supervising and controlling the sector, given its integral role in the national economic structure. After analyzing the powers granted to these authorities and evaluating them in light of Law 23-09, their crucial role in developing and implementing monetary policy and supervising banking operations becomes evident.

Both the central bank and the committee play crucial and influential functions. They underline the critical nature of supervision and regulation in fostering economic stability and managing the banking sector by economic and institutional development requirements.

From the preceding, our study has arrived at the following conclusions can be drawn:

- Changing the name and structure of the Central Bank indicates progress in the institutional framework and is in line with the changing needs of the banking industry at a specific stage.

The revisions and supplements to the Central Bank's jurisdiction enhance its role in overseeing the banking industry and promoting adherence to standards of good conduct and Professional principles.

- Changes in the composition of the Banking Committee signify advancements in the regulatory framework and enhance its oversight and regulatory function.

The Banking Committee's function as a supervisory entity is seen in its responsibility for establishing supervision programmes and enforcing compliance.

Disciplinary sanctions, which enhance compliance with laws and regulations.

Defining the Banking Committee's nature as an independent administrative authority or of a dual nature requires further study to ensure maximum benefit from its supervisory

and regulatory role.

Based on these findings, we recommend the following:

- Enhancing interaction between the Central Bank and relevant entities to ensure the efficient implementation of powers and laws.

- Enhancing transparency in supervision processes and clarifying the mechanisms used in making regulatory decisions.

- Strengthening the organizational and supervisory capacities of the Banking Committee via member training and providing them with necessary resources.

- Conducting Upcoming research will evaluate the impact of legal changes on the efficiency of the banking sector and the general economy.

- Providing legal services and technical support enables the Banking Committee to perform its role effectively and efficiently.

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