

Monetary and Banking Council Under Law 23/09

المجلس النقدي و المصرفي في ظل القانون 23/09

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Abstract:

The Monetary and Banking Council is a supervisory body and financial regulator that manages the banking and monetary system of the State. Law 23/09, containing the Monetary and Banking Act, which abolished the monetary and loan law, This replaces the Monetary and Loan Council in a trial by Algerian legislators to strengthen the financial system and ensure the stability of the banking and monetary system, however, the study revealed that the updated council still needs more autonomy to reach the required performance in the conduct of the monetary and banking sector.

Keywords: Monetary and Banking council, Financial Sector, Economic Control.

الملخص:

يعد المجلس النقدي و المصرفي هيئة رقابة و تنظيم مالي يعمل على إدارة النظام المصرفي و النقدي للدولة ، حيث تم إنشاؤه بموجب القانون 09/23 المتضمن القانون النقدي و المصرفي الذي ألغى قانون النقد و القرض ، و ذلك ليحل محل مجلس النقد و القرض في محاولة من المشرع الجزائري لتعزيز النظام المالي و ضمان استقرار النظام المصرفي و النقدي ، إلا أن الدراسة كشفت أن المجلس المستحدث مازال في حاجة إلى المزيد من الاستقلالية للوصول للأداء المطلوب في تسيير القطاع النقدي و المصرفي .

الكلمات المفتاحية: المجلس النقدي و المصرفي ، القطاع المالي ، الضبط الاقتصادي

Introduction:

The Monetary and Banking Council is an oversight and financial and monetary organization that manages and regulates the banking and

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monetary system in a given country. The powers of the Monetary and Banking Council vary according to each country's financial and monetary system.

The Monetary and Banking Council of Algeria is an important institution in the economic system. It is responsible for the formulation and implementation of monetary policy and the regulation of the banking system. The Monetary and Banking Act No. 23-09, published in June 2023, has faced significant changes to the Monetary and Banking Council's powers.

Act No. 23/09 gives the National Bank increased powers to regulate and supervise the financial system, discover its main responsibilities and the impact of this law on the banking sector.

Although these powers are common, they may vary slightly from country to another depending on each country's legal and economic system.

1-The concept of the monetary and banking board:

Act No. 23-09 of 3 Dhu al-Hijjah 1444 corresponding to 21 June 2023 includes the Monetary and Banking Code, which is the regulatory mechanism governing the management and operation of the Bank of Algeria and defining its powers and operations. The Act regulates the composition and powers of the Monetary and Banking Council and specifies the functions and powers of the Banking Commission in particular. Law No. 23/09 was issued in response to the need to strengthen financial regulation and ensure the stability of the banking and monetary system. It has been adopted to ensure transparency and reduce financial risks.

1.1: The legal Nature of the Monetary and Banking Council

The legal nature of the Monetary and Banking Council is different from country to another. In many countries, the Monetary and Banking Council is the body responsible for regulating and controlling the country's banking and monetary system. It has an organized authority to regulate the business of banks and other financial institutions, implement monetary policies and control inflation and exchange rate.

1.1.1: Comparison with Monetary and Loan Council

In the light of the lawmaker's silence on determining the legal nature of the Monetary and Loan Council, It was necessary to look for indicators of this nature and deduce them by extrapolating from the texts of the Monetary and Loan Law.

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By reference to the latter, the legislator empowered the Council to issue the cash and to describe it on this basis as monetary power (first), as a result, it was also characterized as an administrative authority (second).

First: The Monetary and Loan Council is a Monetary Authority

The issue of the Monetary and Loan Council having the status of a monetary authority is not problematic because the Algerian legislature's position is explicit in Article 62 of Ordinance No. 03/11¹, which stipulates that: " The Council transfers powers as a monetary authority in the fields related to the following:

"... This text is offset by the following text in the Official Gazette published in French'

“le conseil est investi des pouvoirs en tant qu' autorité monétaire dans les domaines concernant... “

the board is vested with powers as a monetary authority in matters relating to”...

It should be noted from this text that the Monetary and Loan Board is regarded by the legislator as a "monetary authority" without specifying its legal nature, but in return it determines the nature of most control powers, including what is considered an independent administrative authority such as a water control authority², or an independent control authority such as a postal and telecommunications control authority³

Second: Monetary and Loan Council is an Administrative Authority

The administrative nature of the Monetary and Loan Board can be inferred by relying on the physical and organic standard.

Organic Standard:

This is reflected in the legislature's subjection of individual regulations and decisions issued by the Monetary and Loan Council to administrative judicial control, so that these decisions can be appealed for

¹ Article 62 of Order 03/11 of August 26, 2003, Official Gazette No. 52, of August 27, 2003, amended and supplemented.

² Article 65 of Law No. 05/12 of August 4, 2005, relating to water, Official Gazette No. 60, dated September 4, 2005.

³ Article 1 of Law No. 2000/03 of August 5, 2000, which determines the general rules relating to mail and telecommunications, Official Gazette No. 48, dated August 6, 2000.

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annulment before the Council of State¹, so that the nature of the Monetary and Loan Council is adapted as an administrative authority.²

Although the Monetary and Loan Board is considered to be of an administrative nature, its legal nature remains ambiguous, but it is outside the traditional administrative ladder³.

In addition, the Monetary and Loan Board is one of the Bank of Algeria's bodies because most of its members are members of the council of administrative directors of the Bank of Algeria⁴. In his capacity as Director of the Bank of Algeria, the Governor chairs the Monetary and Loan Council, as well as the Council's composition of its members⁵, including high officials, who are appointed by the President of the Republic to suggest that the Monetary and Loan Council is of an administrative nature .

Materialistic Standard:

It relates to the nature of the powers assigned to the Monetary and Loan Council as a monetary authority because the latter was monopolized by the executive authority⁶. After the issuance of the Monetary and Loan Act No. 90/10, matters relating to monetary, loan and exchange were transferred from the executive authority, exactly the Ministry of Finance to the Monetary and Loan Board, knowing that these tasks require the use of the privileges of the public authority so that some of these tasks relate to the public facility, such as regulating the monetary market, maintaining price stability and protecting depositors.⁷

The Monetary and Enforcement Board is therefore empowered to make organizational and individual decisions.

1.1.2: Legal adaptation of the Monetary and Banking Council

The legal nature of the Monetary and Banking Council is that it is an independent administrative body, a state body, but that have some autonomy from the executive authority. This independence is that the Council is not

¹ Articles 65 and 87 of Order No. 03/11, Op. Cit.

² RACHID ZOUAIMIA, Independent Regulatory Authorities in the Financial Sector in Algeria, Edition House, Belkeise, Algeria, 2013, p 15.

³ Ibid, p13.

⁴ Article 58 of Order No. 03/11, Op. Cit.

⁵ Article 60 of Order No. 03/11, Op. Cit

⁶ RACHID ZOUAIMIA: Law of Economic Regulation, Berti edition, Algiers, 2006, p 25.

⁷ The legislator mentioned the phrase "protection of depositors" in Chapter One of Book Six of Order No. 03/11, as well as the text of the second paragraph of Article 99 of the same order. Op, Cit.

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subject to the supervision or control of the Minister of Finance, but only to the President of the Republic¹.

This text was explicitly stated in article 1 of Act No. 23-09², which establishes the rules governing the work of the Monetary and Banking Council, as follows:

The Monetary and Banking Council is an independent administrative body consisting of the President of the Republic, the Minister of Finance, the Minister of Commerce, the Minister of Industry and the Governor of the Bank of Algeria".

The reason for the establishment of the Monetary and Banking Council was that monetary policy and regulation of the banking system were important issues affecting the national economy, and it was therefore necessary to establish an independent body for the formulation and implementation of such policies.

The Monetary and Banking Council is one of the most important institutions in the State's economic system. It plays an essential role in achieving economic stability by:³

- Maintain price stability.
- Ensure the integrity of the banking system.
- Provide financing for different economic sectors.

The terms of reference of the Monetary and Banking Board are:

- Monetary policy-making.
- Regulation of the banking system.
- Monitoring the banking system.

Multiple jurisprudence on the legal adaptation of the Monetary and Banking Council, where some consider it as an ordinary administrative body, others as an independent administrative body, while some others as a quasi-judicial body.

¹ Khanfousi Abdel Aziz: The Legal and Economic Impacts of Globalization on the Algerian Banking System, Publications of the Arab Organization for Administrative Development, Cairo, 2017, p. 56.

² Article 1 of Law No. 23-09 dated Dhu al-Hijjah 3, 1444, corresponding to June 21, 2023, includes the Monetary and Banking Law and specifies the rules for regulating the work of the Monetary and Banking Council.

³ Bouhada Mohamed Saad: Ben Chahra Choul, dz.ghardaia-univ.www, on February 11, 2020 at 14:30, The control of the executive authority over the Monetary and Credit Council in setting banking regulations between the realization of the principle of independence and the reality of Algerian legislation, Journal of Scientific Horizons, Volume 11, Issue 04, Faculty of Law and Political Sciences of the University of Ghardaia, Algeria, 2019. P32.

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A. Legal adaptation as an ordinary administrative body:

In the opinion of the proponents, the Monetary and Banking Council is an ordinary administrative body, with moral personality and financial independence, but subject to the supervision of the Finance Minister. Their arguments are that the Monetary and Banking Council issues executive decisions and instructions and exercises control and regulation authority over banks and financial institutions.¹

B. Legal adaptation as an independent administrative body:

Those holding this opinion consider that Monetary and Banking Council is an independent administrative body, with moral personality and financial independence, and is not subject to the supervision of the Minister of Finance, but only to the supervision of the President of the Republic. Their arguments are that monetary policy and regulation of the banking system are important issues affecting the national economy, therefore it is essential that the monetary and banking council be independent of the executive branch, so that it can make decisions that are in the interest of the national economy without any political considerations.

C. Legal adaptation as a quasi-judicial body:

Those holding this opinion consider that Monetary and Banking Council is a quasi-judicial body, with moral personality and financial independence, and exercises the power to control and regulate banks and financial institutions, but has certain judicial powers, such as the power to adjudicate disputes between banks and financial institutions. Their arguments are that the Monetary and Banking Council exercises certain judicial powers, such as the power to adjudicate disputes between banks and financial institutions, and can therefore be considered a quasi-judicial body.

The prevailing opinion is that the Monetary and Banking Council is an independent administrative body, with moral personality and financial independence, and not subject to the supervision of the Minister of Finance, but only to the supervision of the President of the Republic. Based on the legal texts governing the Monetary and Banking Council, what Emphasizes its independence from the executive branch, the importance of the legal adjustment of the Monetary and Banking Council is that it defines the legal

¹ Azzawi Abdel Rahman: Administrative Licenses in Algerian Legislation, a thesis to obtain a doctorate in public law, Algeria, Faculty of Law, University of Algiers, 2007, p. 78.

framework within which the Council exercises its functions, as well as the relationship between the Council and the executive authority¹.

1.2: Composition of the Monetary and Banking Council

The Monetary and Banking Council is one of the most important bodies responsible for regulating and monitoring the banking system in Algeria. It has extensive powers in this area, including issuing regulatory decisions concerning banks and other financial institutions, monitoring their activities and taking the necessary action in the event of any transgressions.

1.2.1: Composition under Law 03/11

The composition of the Monetary and Banking Council is defined in Law **03/11** on Monetary and Loan, It consists of the Governor of the Bank of Algeria as Chairman, and three members chosen by virtue of their competence in the banking, financial and accounting fields and two judges assigned to the Supreme Court².

Article 58 of Ordinance No. 03-11³ states: "The Cash and Loan Board, which is called 'the Board', shall consist of:

- Members of the Board of Directors of the Bank of Algeria.
- Two persons chosen by virtue of their competence in economic and monetary matters" .

Article 59 of Ordinance No. 03-11⁴: further states: "The two persons shall be appointed to the Council by decree of the President of the Republic.

These two members of the Council shall deliberate and participate freely in the voting within the Council" .

First: Composition

Governor of the Bank of Algeria: The Governor of the Bank of Algeria is President of the Monetary and Banking Council and is the Chief Officer for Monetary and Banking Policy in Algeria. It has extensive powers in this area, including making regulatory decisions on banks and other financial institutions, monitoring their activity and taking action in the event of any transgressions.

¹ Mansour Daoud:, Legal Mechanisms to Control Economic Activity in Algeria, PhD thesis, Department of Law, Faculty of Law and Political Sciences, Mohamed Kheider University of Biskra, 2016, p. 52.

² Lachaab Mahfouz: Al-Wajeez In Algerian Banking Law, Office of University Publications, Ben Aknoun, Algeria, 2006, p. 36.

³ Article 58 of Order No. 03-11 of Jumada al-Thani 27, 1424 corresponding to August 26, 2003, relating to cash and loans, Book Four, Monetary and Loan Council, Part One, Composition of the Monetary and Loan Council.

⁴ Article 59 of the same order.

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Members: The Minister of Finance selects three members of the Monetary and Banking Council, at the suggestion of the Governor of the Bank of Algeria, who are competent in banking, financial and accounting. These members are required to have practical experience in banking, finance or accounting, and to be independent in their positions and decisions.

Judges: Two judges shall be assigned by the Supreme Court of the Monetary and Banking Council, at the suggestion of the First President of that Court, after consultation with the Supreme Council of the Judiciary. These judges are required to have practical experience in banking law¹.

Article 60 of Ordinance No. 03-11² states: "The Council shall be chaired by the Governor of the Bank of Algeria, who shall convene the meeting and determine its agenda. The Council shall determine its rules of procedure, and decisions shall be taken by a simple majority of votes. In the event of an equal number of votes, the president's vote shall prevail.

The Council shall hold at least four regular sessions a year and may be convened whenever necessary, at the initiative of its President or two members, proposing the Council's agenda and requiring at least six (6) Council members to attend. No adviser can be authorized to be represented at the Council's meeting.

The council shall determine the attendance allowance of its members and the conditions under which the payment of possible expenses that its members may make.

The Council may establish advisory committees within it and determine their functions".

Second: Objectives of the composition:

The composition of the Monetary and Banking Council aims to achieve a range of objectives, including :³

-To ensure the independence of the Council in the performance of its functions: The inclusion of the Governor of the Bank of Algeria as President of the Council is aimed at ensuring the Council's independence in the performance of its functions. The Governor of the Bank of Algeria is the

¹ Khanfoussi Abdel Aziz: The Legal and Economic Impacts of Globalization on the Algerian Banking System, without edition, Publications of the Arab Organization for Administrative Development, Cairo - Egypt, 2017, p. 68..

² Article 60 of Order 03-11, Op. Cit.

³ Khawalid Abu Bakr: website www.democraticac.dz, December 6, 2019 at 15:10, "Evaluation of the reform of the Algerian monetary and loan law and the most prominent amendments to it," Journal of Political Science and Law, Volume 02, Issue 07, Arab Democratic Center, Germany-Berlin. , 2018.

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highest responsible for monetary and banking policy in Algeria and possesses broad powers in this field.

-Ensuring efficiency in the performance of its functions: the inclusion of members with practical experience in banking, finance and accounting is aimed at ensuring efficiency in the performance of its functions, as this practical experience contributes to appropriate decisions in the field of monetary and banking policy.

-Ensuring judicial representation: the inclusion of two judges from the Supreme Court aims to ensure judicial representation in the Council, as judges are independent in their positions and decisions, thereby contributing to the achievement of justice in monetary and banking policy.

The composition of the Monetary and Banking Council under Law 03/11 contributes to a collection of objectives, including ensuring the Council's independence in the performance of its functions, ensuring efficiency in the performance of its functions and ensuring judicial representation.

1.2.2 : Composition under Law 23/09

The composition of the Monetary and Banking Council is determined in Law 09/23 relating to money and loans. It consists of the Governor of the Bank of Algeria as Chairman, five members chosen according to competence in the banking, financial and accounting field, and two judges appointed by the Supreme Court.

The text of Article 61 of Law No. 23-09 ¹states: “The Monetary and Banking Council, which is called in the text “the Council,” shall consist of:

- Members of the Board of Directors of the Bank of Algeria,
- A person chosen based on his competence in economic and monetary matters,
- A person selected based on his competence in the field of Islamic banking,
- An Executive member from the Bank of Algeria, with at least the rank of general manager.

The three (3) members mentioned in the last three terms are appointed members of the Council by presidential decree.

¹ Article 61 of Law No. 23-09 of Dhu al-Hijjah 3, 1444, corresponding to June 21, 2023, includes the Monetary and Banking Law and determines the rules for regulating the work of the Monetary and Banking Council, Chapter Four, Monetary and Banking Council, Chapter One: Composition of the Monetary and Banking Council.

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These council members deliberate and participate in voting within the council”.

First: The Composition

Governor of the Bank of Algeria: The Governor of the Bank of Algeria is the head of the Monetary and Banking Council and is the highest official in charge of monetary and banking policy in Algeria. He has wide powers in this field, including issuing regulatory decisions related to banks and other financial institutions, monitoring their activities, and taking the necessary measures in case of any violations.

Members: The Minister of Finance chooses five members of the Monetary and Banking Council, based on the proposal of the Governor of the Bank of Algeria, who are competent in the field of banking, finance and accounting. These members must have practical experience in the field of banking, finance or accounting, and must be independent in their positions and decisions.

Judges: Two judges from the Supreme Court shall be assigned to the Monetary and Banking Council, based on the proposal of the first president of this court after consulting the Supreme Council of the Judiciary. These judges are required to have practical experience in the field of banking law.¹

Article 62 of Law 23-09² stipulates that "The Council is chaired by the Governor of the Bank of Algeria, who summons it to a meeting and determines its agenda.

The Council determines its rules of procedure and takes decisions by a simple majority of votes, and in the event of an equal number of votes, the president's vote shall prevail.

The Council holds at least four (4) ordinary sessions per year. It may be summoned to convene whenever necessary, at the initiative of its president or two of its members who in this case propose the Council's agenda. Holding Council meetings requires the attendance of at least five (5) of its members.

No member can grant an authorization to represent him/her at a Council meeting.

¹ Khanfoussi Abdel Aziz: The Legal and Economic Impacts of Globalization on the Algerian Banking System, Op. Cit., p. 72.

² Article 62 of Law 23-09, Op. Cit

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The Council shall determine the attendance allowance of its members and the conditions under which expenses incurred by its members shall be reimbursed.

The Board shall be provided with a general secretariat whose powers, organization and functioning shall be determined by the Bank's Board of directors, based on a proposal from the Monetary and Banking Council."

Second: Changes in the composition of the Monetary and Banking Council

Law 09/23 introduced some changes in the composition of the Monetary and Banking Council, adding two members to the Council and increasing the number of judges from one to two. These changes are intended to accomplish a number of goals, including:¹

-Strengthening the independence of the Council in performing its functions: Increasing the number of members of the council aims to strengthen its independence in performing its duties, as this increase contributes to broadening the social base of the decisions taken by the council.

-Enhancing efficiency in the performance of its duties: Increasing the number of members of the Board aims to enhance efficiency in the performance of its functions, as increasing the number of members helps ensure the representation of various specialties in the banking, finance, and accounting fields.

-Ensuring judicial representation: Increasing the number of judges in the Council aims to ensure judicial representation, as judges are independent in their positions and decisions, which contributes to achieving justice in the field of monetary and banking policy.

The composition of the Monetary and Banking Council under Law 09/23 contributes to achieving a number of objectives, including enhancing the independence of the Council in performing its functions, enhancing efficiency in performing its functions, and ensuring judicial representation.

By comparing the composition of the Monetary and Banking Council under Laws 03/11 and 09/23, the following changes can be noted:

¹ Othman Othmanieh: lectures on the Algerian banking system, addressed to third-year students of Bachelor of Economic Sciences, specializing in banking and monetary economics, Department of Economic Sciences, 2023.

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- **The number of council members increased from three to five:** This change aims to strengthen the independence of the Council in performing its functions and enhance efficiency in the performance of its functions.
- **Increase the number of judges on the Council from one to two:** This change aims to ensure judicial representation on the council.

In general, it can be said that these changes aim to enhance the performance of the Monetary and Banking Council in regulating and monitoring the banking system in Algeria.

2. The powers of the Monetary and Banking Council under Law 23/09:

The Monetary and Banking Law was published in issue 43 of the Official Gazette, which aims, through a number of measures, to modernize the banking system, strengthen its regulatory and supervisory functions and enable it to keep pace with international practices.

Law No. 23-09, dated June 21st, 2023, containing the Monetary and Banking Code, signed by President of the Republic Abdelmadjid Tebboune, guarantees the strengthening of the governance of the Bank of Algeria through several provisions, including the adoption of a term system for the governor and deputy governors of the Bank of Algeria¹

Article 64 of Law 23-09 states that: "The Council shall be empowered as a monetary authority in the fields related to the following ²:

- a. The issuance of money, as provided for in Articles 3 to 5 of this law, as well as its coverage ;
- b. The criteria and conditions of operations of the Bank of Algeria, in particular with regard to discounting, bonds under trust, pledging of public and private bonds, and operations related to precious minerals and currencies ;
- c. Determining, supervising, monitoring and evaluating monetary policy. For this purpose, the Council sets monetary objectives, particularly in relation to the evolution of monetary and credit aggregates, determines the instruments of monetary policy as well as the rules of prudence in the monetary market and ensures the dissemination of market information aimed at avoiding the risk of imbalance ;
- d. New savings and loan products, as well as banking services ;
- e. Standards and the functioning and safety of payment systems;

¹ <https://www.aps.dz/ar/economie/145956-2023-06-27-19-03-28>

² Article 64 of Law No. 23-09 dated Dhul-Hijjah 3, 1444, corresponding to June 21, 2023, includes the Monetary and Banking Law and determines the rules for regulating the work of the Monetary and Banking Council, Chapter Four, Monetary and Banking Council, Chapter Two: Powers of the Council.

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- f.** Conditions for the accreditation and establishment of banks and financial institutions, as well as conditions for the establishment of their networks, in particular the determination of the minimum capital of banks and financial institutions as well as the modalities for its liquidation;
- g.** The conditions for opening representative offices of foreign banks and financial institutions in Algeria ;
- h.** The prudential standards applicable to banks and financial institutions, as well as the standards and rules applicable to digital banks and payment service providers ;
- i.** The protection of the customers of banks and financial institutions, particularly in the area of operations with these customers ;
- j.** Accounting standards and rules applicable to banks and financial institutions, taking into account international developments in this field, as well as the modalities and timelines for the communication of accounts, statistical accounting data and positions to all those having rights, the Bank of Algeria in particular ;
- k.** The technical conditions for practicing the banking profession and the professions of counseling and intermediation in the banking and financial fields .
- l.** Determining the objectives of the exchange rate policy and the method of exchange control ;
- m.** The legal regulation of the exchange rate and the organization of the exchange market ;
- n.** Management of exchange reserves;
- o.** The rules of good conduct and professional ethics applicable to banks and financial institutions, independent intermediaries, exchange offices, as well as payment service providers;
- p.** Accreditation requirements for independent intermediaries and exchange offices, in particular the minimum capital requirement and the conditions for its discharge ;
- q.** The conditions for the accreditation and establishment of payment service providers, in particular the minimum capital requirements, the methods which they are required to maintain and protect their customers, and the accounting standards and rules that apply to them.

The Council takes the following individual decisions:

- a.** Authorizing the opening of banks and financial institutions, amending their statutes, and withdrawing accreditation .
- b-** Authorizing the opening of representative offices for foreign banks .
- c-** Delegating powers in the field of applying the exchange regulation .

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d. Decisions related to the application of regulations enacted by the Council.

e- Authorizing the opening of payment service providers.

f- Authorizing the opening of Independent intermediaries and exchange offices.

The Council shall exercise its powers under this Law through regulations.

The Council shall hear the Minister of Finance at the latter's request.

The government consults the Council whenever it deliberates on monetary or loan matters or those that could affect the monetary situation.

According to Article 65: "The Governor shall communicate draft regulations before their promulgation to the Minister of Finance, within two days following the Council's approval, who shall have ten (10) days to request amendments.

The Governor must then summon the Council to meet within five (5) days and present the proposed amendment.

'The new decision adopted by the Council shall be effective regardless of its content.'¹

Article 66: "The Governor shall issue the regulations that have become effective and publish them in the Official Gazette of the People's Democratic Republic of Algeria, and the regulations shall be invoked against third parties as soon as they become effective.

In case of urgency, the regulations shall be published in two national and foreign language dailies and on the website of the Bank of Algeria to be invoked against third parties as soon as this procedure is completed".²

2.1: Regulatory Jurisdiction of the Monetary and Banking Council

The Monetary and Banking Council (MBC) has broad regulatory powers under Law 23-09, as the law authorizes it to formulate and implement monetary and banking policies, in addition to supervising financial institutions.

2. Establish regulatory rules and standards for financial institutions, including banks and non-bank financial institutions :

Law **23-09** defines the powers of the Monetary and Banking Council to set regulatory rules and standards for financial institutions in **Article 16**,³

¹ Article 65 of Law No. 23-09, Op. Cit.

² Article 66 of Law No. 23-09, Op. Cit.

³ Article 16 of Law No. 23-09, Op. Cit.

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where it states: "The salary of the governor and the salary of the deputy governors shall be determined by executive decree and shall be borne by the Bank of Algeria.

The governor and deputy governors, or their heirs, where appropriate, except in the case of dismissal for serious fault, shall receive, upon termination of the exercise of their functions, a compensation equal to two years' salary paid by the Bank of Algeria, excluding any other amount paid by this bank.

The governor and deputy governors may not, for a period of two years after the end of their term of office, direct or work in an organization subject to the authority or control of the Bank of Algeria or a company controlled by such an organization, nor act as agents or advisors to such organizations or companies".

The Monetary and Banking Council is responsible for setting regulatory rules and standards for financial institutions, including banks and non-bank financial institutions, with the aim of protecting the financial system from risks and promoting financial stability.

These rules and standards include the following:

- Capital rules and standards.
- Risk rules and standards.
- Governance rules and standards.
- Transparency rules and standards.

2.1.2: Issuing licenses to Financial Institutions and Monitoring them

Law 23-09 defines the powers of the Monetary and Banking Council in issuing licenses to financial institutions and monitoring them in Article 17,¹ where it states that: "The Governor shall manage the affairs of the Bank of Algeria.

-The Governor of the Bank of Algeria, called in the body of the text "the Governor", takes all executive measures and performs all acts within the framework of the law.

-He signs, on behalf of the Bank of Algeria, all agreements and minutes relating to financial years, receipts and accounts of results.

-Represents the Bank of Algeria before the public authorities in Algeria, foreign central banks, international financial bodies and third parties in general.

-Lawsuits are filed and defended based on his follow-up and expediting. It takes all the precautionary measures it deems useful.

¹ Article 17 of Law No. 23-09, Op. Cit.

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- Represents the Bank of Algeria in all civil actions and before the courts.
- Carries out all legally authorized purchases and disposals of real estate properties. He organizes the interests of the Bank of Algeria and determines its tasks.
- Bank of Algeria employees are employed in accordance with the conditions stipulated in the basic law for employees. He appoints them to their positions, promotes them, and dismisses them. Appoints representatives of the Bank of Algeria on the boards of other institutions, when such representation is established".
- The Monetary and Banking Council is responsible for licensing and monitoring financial institutions, with the aim of protecting depositors' rights and promoting transparency in the financial sector.

These specializations include the following:

- Issuing licenses for banks and non-bank financial institutions.
- Monitor financial institutions to ensure compliance with rules and laws.
- Take the necessary measures in case that financial institutions violate the rules and laws.

2.1.3: Setting rules and standards for capital markets:

- Law 23-09 defines the powers of the Monetary and Banking Council to set rules and standards for capital markets in Article 18¹, stating: "If it appears that the situation of a bank or financial institution requires justified financial support, the Governor of the Bank of Algeria shall invite the main shareholders of the bank or financial institution concerned to provide such support".
- The governor can also organize the contribution of all banks and financial institutions to take the necessary measures to protect the interests of depositors and others, improve the functioning of the banking system, and preserve the reputation of the financial area."
- Thus the Monetary and Banking Council is the body responsible for setting rules and standards for the capital markets, with the aim of protecting investors and enhancing the efficiency of the financial markets.

These rules and standards include the following:

- Rules and standards for listing on the capital markets.
- Rules and standards for dealing in capital markets.
- Rules and standards of disclosure in capital markets.

2.1.4: Setting rules and standards for credit policies

Law 23-09 defines the powers of the Monetary and Banking Council in setting rules and standards for credit policies in Article 19², where it

¹ Article 18 of Law No. 23-09, op. cit.

² Article 19 of Law No. 23-09, op. cit.

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states that: "The governor shall define the powers of each of the deputy governors and clarify their powers".

And can delegate his signature to agents of the Bank of Algeria.

For the needs of the service, he can also choose special agents from among the Bank of Algeria's staff".

The Monetary and Banking Council is the body responsible for setting rules and standards for credit policies, with the aim of protecting the rights of borrowers and promoting financial stability.

These rules and standards include the following:

- Rules and standards for granting credit.
- Credit risk management rules and standards.
- Rules and Standards for Transparency in Credit Policies.

2.1. 5 Issuing instructions and guidance to financial institutions

Law 23-09 defines the powers of the Monetary and Banking Council to issue instructions and directives to financial institutions in Article 20¹, where it states: "Except in cases of proven fraud or serious errors, agents of the Bank of Algeria, or any person acting under the authority of the Bank of Algeria or the Banking Commission, in the performance of the functions defined under this law, shall not incur any civil liability for the exercise of their functions".

The Monetary and Banking Council is the body responsible for issuing instructions and directives to financial institutions, with the aim of achieving the objectives set out in the law.

These instructions and directives include the following:

- Instructions related to the application of regulatory rules and standards.
- Instructions related to the operations of financial institutions.
- Instructions related to the governance of financial institutions.

These regulatory mandates aim to achieve the following objectives:

- Protecting the financial system from risks.
- Promote financial stability.
- Protecting depositors' rights.
- Promote transparency in the financial sector.

¹ Article 20 of Law No. 23-09, Op. Cit.

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Below are some specific examples of the Monetary and Banking Council's regulatory powers:

- The Monetary and Banking Council sets capital rules and standards for financial institutions, which these institutions must adhere to.
- The Monetary and Banking Council sets rules and standards for the risks that financial institutions must manage, including credit risk and market risk.
- The Monetary and Banking Council establishes rules and standards of governance for financial institutions, which these institutions must adhere to.

The Monetary and Banking Council is the body responsible for regulating the financial sector in Algeria, with broad powers in this field.

2. The Monetary and Banking Council's Supervisory Jurisdiction

2.2.1 Licensing of financial institutions

According to Article 13 of Law No. 23-09¹, which states: "In the event of legally proven incapacity or serious error, their functions shall be terminated in the same manners.

-In the case that the Governor of the Bank of Algeria is legally incapacitated or commits a serious error, one of his deputies shall assume the duties of the Governor until the appointment of a new Governor".

-The Monetary and Banking Council grants licenses for the establishment and practice of banking and other financial activities, after ensuring that the necessary legal and regulatory conditions are met.

These conditions include the following:

Paid-up capital: The paid-up capital of a financial institution must be sufficient to cover the risks to which it is exposed.

Qualified management: The management of the financial institution must be qualified to manage banking and financial activities.

Sound Accounting System: The financial institution must establish a sound accounting system to monitor and manage its funds.

2.2.2: Supervision of financial institutions

According to Article 14 of Law No. 23-09², which states: "The Governor of the Bank of Algeria and his deputies must take an oath before the competent judicial authorities in whose jurisdiction the central headquarters of the Bank of Algeria is located, in the following form: "I

¹ Article 13 of Law No. 23-09, Op. Cit.

² Article 14 of Law No. 23-09, Op. Cit.

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swear by Almighty God that I will perform my work honestly and faithfully, maintain honesty and professional secrecy, respect the laws of the Republic and preserve public funds. God is my witness".

-The Monetary and Banking Council supervises financial institutions to ensure their compliance with applicable laws and regulations.

Supervision of financial institutions includes the following:

-Inspection: The Monetary and Banking Council conducts periodic inspections of financial institutions to ensure compliance with applicable laws and regulations.

-Issuing instructions and decisions: The Monetary and Banking Council issues instructions and decisions necessary to ensure the safety of the financial system.

-Sanctions: The Monetary and Banking Council can impose penalties on financial institutions that violate applicable laws and regulations.

2.2.3 Risk minimization:

According to Article 15 of Law No. 23-09¹, which states: "The office of governor and deputy governors is incompatible with every electoral term, every governmental function or² every public function.

– The governor and his deputies cannot engage in any activity, profession or job during their term of office, except representing the state to international institutions of a monetary, financial or economic nature.

-They cannot borrow any amount from any Algerian or foreign institution, nor can they accept any pledge signed by one of them in the portfolio of the Bank of Algeria or in the portfolio of any institution operating in Algeria".

-The Monetary and Banking Council takes the necessary measures to prevent and address the risks that threaten the financial system.

These measures include the following:

Setting standards and rules: The Monetary and Banking Council sets standards and rules to prevent risks to the financial system.

Intervention in financial markets: The Monetary and Banking Council can intervene in financial markets to prevent risks that threaten the financial system.

2.2.4: Protection of depositors and investors

According to Article 16 of Law No. 23-09³, which states: "The governor and deputy governors may not, for a period of two years after the end of their term of office, manage or work for an institution under the authority or control of the Bank of Algeria or a company controlled by such

¹ Article 15 of Law No. 23-09, Op. Cit.

³ Article 16 of Law No. 23-09, Op. Cit.

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an institution, nor may they act as agents or advisors to such institutions or companies".

The Monetary and Banking Council protects depositors and investors by establishing rules and regulations.

These rules and regulations include the following:

Deposit Insurance System: The deposit insurance system guarantees compensation to depositors in the event that the financial institution in which they deposited their money goes bankrupt.

Protecting Investors' Rights: The law protects investors by establishing rules and procedures to prevent manipulation

Conclusion:

The Monetary and Banking Council enjoys broad supervisory powers under Law 23-09, which help it achieve its main objectives of ensuring the integrity of the financial system and protecting the interests of depositors and investors.

These powers are necessary to ensure the stability of the Algerian financial system and protect the interests of depositors and investors, as they help the Monetary and Banking Council to play an effective role in managing monetary policy and monitoring the financial sector.

The following are some of the recommendations that can be made to enhance the powers of the Monetary and Banking Council:

- Strengthening the independence of the Monetary and Banking Council: The board should be independent of the government and other economic sectors to ensure that it is able to take the necessary decisions to protect the financial system.

- Giving the Monetary and Banking Council additional powers: The council could be given additional powers, such as the power to impose fines on offending financial institutions, or the power to dissolve troubled financial institutions.

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