

The Regulatory Authority of the Monetary and Banking Council and Its Legal Limits in Regulating Algerian Banking Activity Under Law No. 23-09

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Abstract

Banking activity has emerged as one of the economic domains most inextricably linked to statutory and prudential regulation, given its immediate nexus to public deposits, credit allocation, investment liquidity, payment systems, and macroeconomic stability. Consequently, banking governance is no longer confined to promulgating generic rules governing institutional incorporation; rather, it extends to establishing a specialized institutional ecosystem tasked with sector regulation, ongoing supervision, and disciplinary intervention. In this context, Law No. 23-09 of June 21, 2023, comprising the Monetary and Banking Law, restructured the legislative framework of the Algerian banking system, endowing the Monetary and Banking Council with expansive regulatory competencies alongside decisive prerogatives in licensing, accreditation, and revocation. This jurisdictional scope poses critical legal inquiries regarding the Council's regulatory nature, substantive boundaries, operational independence, and procedural interaction with the Banking Commission. Employing an analytical legal methodology, this study examines the statutory basis of the Council's regulatory authority under Law No. 23-09, delineating regulatory norms from individual administrative acts, evaluating substantive guarantees for banking institutions, and analyzing judicial review over banking authorities. The study concludes that regulatory efficacy depends fundamentally upon jurisdictional clarity, functional complementarity, strict observance of the principle of legality, and rigorous judicial oversight.

Keywords: Monetary and Banking Council, Monetary and Banking Law No. 23-09, Regulatory Authority, Banking Regulation, Banking Commission, Licensing, Accreditation, Revocation, Judicial Review, Principle of Legality.

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1. Introduction

In the modern economic state, banking activity is no longer regarded as a purely commercial enterprise subject entirely to unrestricted market forces. Rather, it represents an essential systemic pillar of the macroeconomic and financial infrastructure. Consequently, banking operations are governed by legal imperatives that transcend traditional contractual relationships between commercial professionals and clients. Commercial banks do not trade solely with their equity capital; they collect public deposits, intermediate credit, facilitate payments, and finance national economic development. As a consequence, any operational vulnerability or financial instability within a single bank possesses systemic contagion risks capable of destabilizing counterpart financial institutions, depositor solvency, and the macro-financial order (Bougheta, 2024; Cherfi, 2025).

These systemic imperatives necessitate a specialized legal regime founded on prudential prevention, continuous supervision, and timely administrative intervention. Modern banking regulation operates through an integrated continuum of instruments: regulating initial market entry, establishing ongoing prudential standards and capital adequacy ratios, executing permanent supervision, and enforcing disciplinary sanctions or accreditation revocation where violations occur. In Algeria, this framework evolved through successive legislative reforms, culminating in the enactment of Law No. 23-09 of June 21, 2023, on the Monetary and Banking Law (published in the Official Gazette of the People's Democratic Republic of Algeria, Issue No. 43, dated June 27, 2023).

Law No. 23-09 represents a pivotal institutional milestone. It reconstituted the Monetary and Banking Council (Conseil Monétaire et Bancaire), redefined its statutory composition and jurisdictional competencies, and reorganized the Banking Commission (Commission Bancaire) within the overarching framework of supervisory control. Crucially, the Algerian legislature opted not to consolidate all regulatory and supervisory functions within a single administrative organ, but instead instituted a functional triadic division: the Monetary and Banking Council exercises primary regulatory and licensing powers; the Banking Commission exercises supervisory, investigative, and disciplinary authority; and the Bank of Algeria executes monetary policy and oversees systemic liquidity.

This institutional architecture generates significant legal questions. When the legislature delegates broad authority to a specialized body to enact general, abstract norms governing an economically sensitive sector, it becomes vital to demarcate the legal nature of this delegated power, its autonomy, its subordination to statutory legislation, and the permissible limits of administrative discretion. Furthermore, an essential distinction arises between the Council's regulatory rule-making authority (*erga omnes* regulations) and its individual administrative determinations, notably regarding licensing, accreditation, and revocation. This demarcation directly determines the nature of judicial litigation and the scope of judicial review exercised by administrative and judicial courts (Guellouli/Ould Rabah, 2020; Garoui, 2024).

Accordingly, the central research problem is formulated: To what extent has Law No. 23-09 established the legal framework for the regulatory authority of the Monetary and Banking Council, and what are the boundaries of this authority in light of the principle of legality and the competencies vested in other banking supervisory bodies? This gives rise to specific sub-inquiries regarding the Council's institutional standing, the demarcation between regulatory and individual acts, the procedural mechanics of accreditation revocation, the operational relationship with the Banking Commission, and the adequacy of judicial review.

2. Methods and Statutory Analysis

This investigation adopts a rigorous analytical-hermeneutic methodology grounded in legislative interpretation and comparative administrative jurisprudence (IMRAD Framework):

- **Textual and Doctrinal Interpretation:** Detailed statutory analysis of the provisions of Law No. 23-09 (specifically Articles 61–67 governing the Council, Articles 104 regarding accreditation withdrawal, and Articles 116–132

structuring the Banking Commission) and implementing regulations, notably Regulation No. 24-02 of February 6, 2024, concerning minimum capital requirements.

- Institutional-Comparative Analysis: Examining the triadic division between rule-making (Monetary and Banking Council), enforcement/discipline (Banking Commission), and operational management (Bank of Algeria), assessing jurisdictional boundaries against administrative rule-of-law standards.

3. Results and Substantive Findings

3.1. Legal Basis of the Council's Regulatory Authority

3.1.1. Institutional Status Within the Banking Regulatory System

The Monetary and Banking Council occupies a preeminent position in the institutional architecture of Algerian financial regulation. The legislature refrained from casting the Council as an ordinary administrative entity, conferring upon it specialized jurisdiction encompassing monetary policy and banking governance pursuant to Articles 61 through 67 of Law No. 23-09. Consequently, the Council does not merely execute statutory enactments; it actively produces regulatory norms that govern financial markets. Its normative acts formulate generalized, abstract legal frameworks governing credit institutions rather than individual entities, establishing a specialized regulatory agency model grounded in legislative delegation (Bougheta, 2024).

3.1.2. The Nature of Specialized Regulatory Authority

The Council's regulatory power is distinguished from the general administrative rule-making vested in executive authorities by its technical and sector-specific nature. Because primary statutory legislation cannot encapsulate the highly volatile technical details of capital adequacy, liquidity ratios, risk management, payment infrastructures, and prudential reserves, the legislature articulates foundational principles while entrusting the Council with technical rule-making. This statutory delegation does not constitute an abdication of legislative authority, but rather an efficient functional distribution: the statute establishes the normative boundaries, and the Council formulates technical implementation rules strictly subordinated to its statutory enabling legislation.

3.1.3. Article 64 as the Core Foundation of Regulatory Competence

Article 64 of Law No. 23-09 serves as the central anchor of the Council's regulatory competence, demarcating its functional remit. These competencies underscore the direct interconnection between monetary policy and banking oversight: regulations governing liquidity, solvency, and credit creation exert immediate structural influence upon macroeconomic stability. Hence, the Council's regulatory mandate operates as an instrument of economic regulation rather than ordinary administrative bureaucracy (Bougheta, 2024).

3.1.4. Regulating the Terms of Banking Activity

Access to the banking market is tightly regulated rather than universally open. The Council establishes rigorous legal requirements governing corporate form, minimum capitalization (e.g., Regulation No. 24-02), executive competence, internal controls, and risk governance. Prior verification ensures that entering institutions possess operational solvency, mitigating systemic hazards before public funds are exposed.

3.1.5. Licensing and Accreditation as Ex-Ante Regulatory Instruments

Banking activities cannot be initiated by private commercial will alone; ex-ante regulatory authorization is imperative. Licensing serves a dual protective role: shielding the financial system against unqualified operators and protecting depositors from systemic insolvency. Accreditation confers a conditional legal status rather than an absolute, immutable right. Pursuant to Article 104 of Law No. 23-09, the Council retains authority to revoke

accreditation without prejudice to disciplinary sanctions imposed by the Banking Commission, illustrating the procedural distinction between regulatory status management and disciplinary punishment.

3.2. Legal Limits of Regulatory Authority and Operational Interaction

3.2.1. The Principle of Legality as a Substantive Constraint

The paramount constraint governing the Council's regulatory mandate is the principle of legality. Regardless of its technical discretion, the Council cannot enact rules *ultra vires* or in contradiction to statutory law. The validity of its regulatory acts rests upon three cumulative pillars: an explicit statutory enabling ground, strict conformity with substantive subject-matter jurisdiction, and adherence to the statutory purpose of delegated authority.

3.2.2. Delineating Regulatory Norms from Individual Administrative Decisions

A rigorous legal distinction must be maintained between general regulations (*règlements*) and individual administrative acts (*décisions individuelles*). Regulations promulgate general, impersonal, and permanent norms governing the entire banking sector. Conversely, individual decisions create, modify, or extinguish legal positions for specific entities (such as granting or revoking bank accreditation). This distinction is critical in contentious administrative litigation, governing applicable remedies, standing, and judicial standards of review (Guellouli/Ould Rabah, 2020).

3.2.3. Accreditation Revocation and Procedural Prerogatives

Accreditation revocation terminates a banking institution's legal capacity to operate. Law No. 23-09 limits revocation to statutory contingencies, including cessation of activity, failure to fulfill initial accreditation criteria, or persistent non-compliance. Revocation represents a condition of ongoing compliance rather than purely disciplinary punishment. Here, the supervisory role of the Banking Commission is critical: the Commission conducts on-site and documentary audits (Articles 116–132), furnishing the factual and financial determinations upon which the Council assesses accreditation status.

3.2.4. Functional Separation and Complementarity Between Council and Commission

Law No. 23-09 structures banking governance upon a rigorous division of labor: the Council establishes normative frameworks (Articles 61–67), while the Banking Commission exercises supervisory and disciplinary authority (Articles 116–132). This progression conforms to rule-of-law standards: Regulation → Supervision → Disciplinary Sanction. Functional complementarity requires that regulatory norms be effectively monitored by the Commission, while disciplinary enforcement remains anchored in precise regulations enacted by the Council (Garoui, 2024; Barik & Gueldasni, 2025). However, as doctrinal studies demonstrate, the Banking Commission's independence remains relative due to its lack of distinct legal personality and financial autonomy (Barik & Gueldasni, 2025).

3.3. Legal Safeguards and Judicial Review

3.3.1. Procedural Guarantees: Right of Defense and Duty to Give Reasons

The legitimacy of administrative banking oversight depends upon robust procedural protections. Article 127 of Law No. 23-09 guarantees affected institutions the right to review disciplinary files, submit written observations, obtain oral hearings, and engage legal counsel. Furthermore, administrative determinations altering institutional legal status must be substantiated by reasoned statements (*obligation de motivation*), protecting institutions against arbitrariness and establishing a clear factual basis for judicial review.

3.3.2. Dimensions of Judicial Review Over Regulatory and Disciplinary Actions

The independence of banking authorities does not insulate them from judicial oversight. Judicial scrutiny balances regulatory efficiency against the protection of corporate rights across four key dimensions:

1. Competence, Form, and Procedure: Ensuring determinations are rendered strictly within statutory jurisdiction and conform to mandated procedural safeguards.
2. Substantive Factual Legality: Verifying that administrative measures rest upon objectively established financial facts and lawful motives.
3. Review of Proportionality: Ensuring that disciplinary sanctions correlate logically with the gravity, culpability, and systemic repercussions of the established infraction, preventing disproportionate penalties.
4. Legal Certainty: Promoting stable, predictable regulatory interpretations to safeguard institutional investment and financial market stability.

4. Discussion and Evaluation of the Regulatory Framework

An objective appraisal of Law No. 23-09 highlights significant statutory strengths alongside areas warranting legislative enhancement:

- Institutional Strengths: Clear legislative enunciation of the Council's specialized mandate; effective institutional separation between rule-making and disciplinary functions; robust ex-ante screening via licensing; and codification of basic procedural guarantees under Article 127.
- Areas Requiring Development: Ambiguities persist regarding the precise borderline between the Council's regulatory prerogatives and its individual administrative acts. Furthermore, the institutional autonomy of the Banking Commission requires reinforcement, and judicial guidelines governing proportionality review over technical financial sanctions need clearer statutory articulation.

5. Conclusions and Policy Recommendations

The study concludes that Law No. 23-09 successfully establishes a modern banking regulatory ecosystem founded upon functional separation between regulation, supervision, and discipline. The Monetary and Banking Council serves as the regulatory cornerstone, exercising delegated rule-making bound by the principle of legality. Accreditation functions as a conditional legal status subject to permanent compliance, while judicial oversight remains the indispensable guarantor of regulatory legitimacy.

To enhance the Algerian banking governance framework, the following recommendations are proposed:

1. Legislative Demarcation: Codify clearer statutory boundaries separating the Council's general regulatory powers from its individual decision-making competences.
2. Institutional Reinforcement: Grant the Banking Commission enhanced functional and budgetary independence to reinforce its disciplinary neutrality.
3. Proportionality Codification: Enact explicit statutory criteria governing the proportionality of administrative sanctions relative to banking violations.
4. Judicial Specialization: Establish specialized financial dispute chambers within the administrative judiciary and provide specialized training in prudential banking law for magistrates.
5. Jurisprudential Transparency: Systematically publish judicial and administrative rulings in banking disputes to establish stable legal precedents and consolidate financial legal certainty.

References (APA 7th Edition)

- Algeria. (2023). Law No. 23-09 of June 21, 2023, comprising the Monetary and Banking Law. Official Gazette of the People's Democratic Republic of Algeria, Issue No. 43, June 27, 2023.
- Algeria. (2024). Regulation No. 24-02 of February 6, 2024, relating to the minimum capital of banks and financial institutions operating in Algeria. Official Gazette of the People's Democratic Republic of Algeria.
- Bank of Algeria. (n.d.). The Monetary and Banking Council and banking regulation. Bank of Algeria Official Portal.
- Barik, R., & Gueldasni, H. (2025). Regulation of banking activity in Algeria by the Banking Commission in light of Law 23-09. *Annals of the University of Algiers* 1, 39(1), 151–165.
- Bougheta, F. E. (2024). The legal status of the Monetary and Banking Council under the Monetary and Banking Law No. 23-09. *Journal of Law and Political Science Notebooks*, 4(2), 46–57.
- Cherfi, K. (2025). The legal framework of the Monetary and Banking Council under Law No. 23-09 comprising the Monetary and Banking Law. Dar Ahlam Publishing.
- Garoui, S. (2024). The legal regime of the Banking Commission in Algeria: A reading of Law No. 23-09 comprising the Monetary and Banking Law. *Al-Bahith Journal for Academic Studies*, 11(2), 626–652.
- General Secretariat of the Government. (n.d.). Official Gazette of the People's Democratic Republic of Algeria.
- Guellouli, S., & Ould Rabah, S. (2020). The specificity of judicial review over the regulations of the Money and Credit Council. *Academic Journal of Legal Research*, 11(4), 232–241.
- Henni, A., & Srhir Bairam, A. M. (2024). The legal status of the Monetary and Banking Council under Monetary and Banking Law No. 23-09. *Journal of Legal Studies*, 26–45.