

SIHAM DERBAL

Lecturer Grade A of the Institute of Law
and Political Science, University Centre
of Maghnia

LEGISLATIVE REGULATIONS OF THE BANKING COMMITTEE IN ALGERIA

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Abstract. *The Banking Committee is a fundamental regulatory and supervisory body in Algerian banking law, as it aims to ensure the stability of the banking sector. This committee consists of a group of members representing the Bank of Algeria and the Ministry of Finance, appointed based on their expertise in the banking and financial field. The role of this committee lies in supervising and monitoring banks and financial institutions and ensuring their compliance with applicable laws. Additionally, the committee plays a key role in protecting the rights of stakeholders by promoting transparency and accountability in banks.*

It is responsible for monitoring the extent to which banks and financial institutions comply with the legislative and regulatory provisions applicable to them, in addition to its disciplinary role in penalizing violations that are detected. The committee also ensures adherence to the rules of proper banking conduct, which means overseeing the commitment of banks and financial institutions to work ethics and the required professional standards in Algeria. Furthermore, it provides its services appropriately and in alignment with Algeria's banking sector goals.

This study aims to explore the legal framework of the Banking Committee in light of the new laws by identifying its structure and examining the role assigned to it under the provisions of the latest Monetary and Banking Law.

Keywords: *Banking Committee, banks, legal system, Composition of the Banking Committee, role of the Banking Committee.*

Introduction

Recently, Algeria has placed significant focus on the banking sector, leading the legislator to issue a series of laws aimed at reforming the banking legislative system.

The most recent of these is Law 23-09 of 2023, which includes the Monetary and Banking Law¹.

This law was introduced to address various legal issues present in previous laws. It includes numerous legal provisions regulating the operation of banks, the judicial appeal system, and the committees and bodies of the Bank of Algeria. Among these committees is the Banking Committee, which is covered in Chapter Three of Part Six, titled “Supervision of Banks, Financial Institutions, and Other Entities Subject to Regulation”.

The committee was initially established under Ordinance 71-47, which regulated credit institutions². However, this ordinance was repealed by Law 86-12 concerning the banking and credit system³, leading to the dissolution of the committee.

Subsequently, on April 14, 1990, Law 90-10 on currency and credit was enacted but was later repealed in 2003 by Ordinance 03-11, dated August 26, 2003, which also regulated currency and credit. This ordinance was later amended by Ordinance 10-04⁴, which was ultimately repealed by Law 23-09, containing the Monetary and Banking Law⁵. Through this law, the legislator established the legal provisions governing the committee’s operations and defined its composition.

The significance of this study lies in shedding light on the legal framework that regulates the Banking Committee’s operations and understanding its role in ensuring banking and financial stability while protecting various interests. This is achieved by analyzing the provisions of Law 23-09 on monetary and banking regulations.

The objective of this study is to comprehend the mechanisms the committee employs to achieve its goals by identifying its structure, defining the legal status of its members, and understanding the exclusive legal role assigned to it compared to other committees of the Bank of Algeria. Additionally, the study examines the operational mechanisms of the committee, including meeting procedures, voting methods, and decision-making processes.

¹ Law 23-09 dated June 21, 2023, concerning the Monetary and Banking Law: <https://www.bank-of-algeria.dz/la-loi-monetaire-et-bancaire/>.

² Order 71-47 dated June 30, 1971, concerning the regulation of credit institutions, Official Gazette, Issue 55, dated July 6, 1971.

³ Law 86-12 dated August 19, 1986, related to the banking and credit system, Official Gazette, Issue 34, dated August 20, 1986.

⁴ Order No. 10-04 dated August 26, 2010, amending and supplementing Order No. 03-11 concerning currency and credit.

⁵ Law 23-09 dated 03 Dhu al-Hijjah 1444, corresponding to June 21, 2023, concerning the Monetary and Banking Law.

Based on the above, the following research question arises:

How has the Algerian legislator regulated the provisions of the Banking Committee? What legal mechanisms have been adopted to define the committee's role in regulating and supervising the banking sector?

To answer this question, we adopted the descriptive method, as it is suitable for this subject by outlining the law that governs the committee, and the analytical method, by analyzing the legal provisions that frame its operation.

In this regard, we have divided our study into the following sections:

1. Definition of the Banking Committee;
2. Powers of the Banking Committee;
3. Operational Mechanisms of the Banking Committee.

1. Definition of the Banking Committee

The banking system is a fundamental pillar in facilitating financial transactions and ensuring transparency and integrity in dealings. To reinforce these principles, the Banking Committee was established, playing a crucial role in maintaining the stability of Algeria's banking system.

1.1. Concept of the Banking Committee

The Banking Committee is one of the independent administrative authorities responsible for overseeing documents and on-site inspections. It ensures that banks and financial institutions comply with legislative and regulatory provisions and adhere to proper banking practices¹.

Generally, the committee can be described as an independent administrative body with a set of assigned functions and responsibilities defined by the Algerian legislator. However, unlike other independent administrative authorities, such as the Competition Council, it does not possess legal personality or financial independence.

From a legislative perspective, it is noteworthy that the new law does not explicitly define the Banking Committee, as was the case in previous laws. Instead, it only specifies its powers and operational mechanisms.

1.2. The Legal Composition of the Banking Committee

The Banking Committee is a regulatory and supervisory body of great significance in the banking sector, as it contributes to ensuring the stability of banks. This committee consists of experts and specialists in the banking and financial fields. But how is this committee formed, and which authority is responsible for appointing its members?

¹ Mohamed Nebhi. The Banking Committee under Law 23-09 // *Al-Matla' Al-Qanouni*, 2024, Vol. 06, Issue 01. Pp. 76–77.

1.2.1. Human Composition

Referring to Article 117 of Law 23-09 on monetary and banking regulations, the legislator defines the legal composition of this committee. It is composed of:

- The Governor of the Bank of Algeria, who serves as the Chairperson.
- Three members selected from individuals with expertise in banking and accounting.
- Two judges:
 - The first judge is seconded from the Supreme Court and is selected by the First President of the court.

- The second judge is seconded from the Council of State and is chosen by the President of the Council of State after consulting the High Council of the Judiciary.

Likewise, the composition of this committee includes a representative from the Court of Auditors, chosen by the president of this council from among the senior advisors, as well as a representative from the Ministry of Finance with a rank of at least director.

It is observed from this legal text that the numerical composition of the committee has not undergone any changes; it consists of a president and seven members. The presidency of this committee is assigned exclusively to the Governor of the Bank of Algeria, as was the case in the previous law, in addition to three members who possess expertise in the banking, accounting, and financial sectors, along with two judges — one appointed from the Supreme Court by its first president and the other appointed from the Council of State by its president after consulting the High Council of the Judiciary.

Furthermore, the committee's composition includes a representative from the Court of Auditors selected from the senior advisors by the president. The second representative must be from the Ministry of Finance with a rank of at least director, unlike the provision in Ordinance 10-04¹ on currency and credit, which did not require this member to hold the rank of director. Therefore, it can be said that the Algerian legislator has maintained the same composition as stipulated in Ordinance 10-04.

In this regard, it is necessary to define the status of members possessing expertise and experience by specifying the entity authorized to nominate them and the criteria they must meet while allowing a broad selection range that includes various fields and sectors such as higher education, the Council of the Nation, public institutions, and private institutions².

¹ Ordinance 10-04 of August 16, 2010, amending and supplementing Ordinance 03-11 of August 26, 2003, relating to money and credit.

² *Farahi Mohamed*. The Impact of Amendments to the Money and Credit Law on the Composition and Independence of the Banking Committee // *Journal of Legal and Political Research*, December 2021, Issue 09. University of Moulay Tahar Saïda, Algeria. P. 146.

Additionally, the Banking Committee consists of a General Secretariat, which is a structure whose powers and organizational framework are defined by the Board of Directors of the bank, based on a proposal from the committee itself, as stipulated in Article 117 of Law 23-09 on currency and banking.

Upon examining this composition, it is evident that it achieves a certain degree of independence due to the diversity of expertise among its members and the decision-making process, which relies on voting. This mechanism prevents any individual member from making unilateral decisions without consulting the rest of the members.

Moreover, the continued assignment of the Governor of the Bank of Algeria as the president of this committee is strong evidence of the governor's authoritative role in managing and supervising the operations of the Bank of Algeria. This also indicates that the committee essentially functions as an internal body under the hierarchical authority of the administrative head, namely, the governor. Additionally, the legislator has integrated members from both the judicial and financial sectors, ensuring that they possess professional competence and extensive experience in their respective fields. The presence of a General Secretariat further ensures the continuity of the committee's work¹.

From the above, it can be concluded that there is a complementary relationship between expertise, competence, and the independence of individuals chosen as members of collective formations within independent administrations. The scientific and knowledge-based capabilities of these individuals significantly contribute to the authority's influence over political entities. Thus, adopting a selection approach based on qualifications and specialization in the field in which the independent authority operates enhances the credibility of the body's work and ensures its autonomy².

1.2.2. Legal Status of the Members of the Banking Committee

The legislator has defined the rights and obligations of the members of the Banking Committee and specified the entities legally authorized to appoint its members and the duration of their membership.

1.2.2.1. Rights of the Members of the Banking Committee

As for the governor and their deputies, they receive salaries determined by an executive decree and borne by the Bank of Algeria. Upon the end of their tenure, they or their heirs receive compensation equivalent to two years'

¹ Karoui Samira. The Legal System of the Banking Committee in Algeria — A Reading of Law 23-09 on Monetary and Banking Law // Al-Baheth Journal for Academic Studies, 2024, Vol. 11, Issue 02. P. 631.

² Aarabe Ahmed. On the Constitutionality of Independent Administrative Authorities in Algeria: Doctoral Thesis, Faculty of Law and Political Science, University of TiziOuzou, 2020–2021. P. 225.

salary, also covered by the Bank of Algeria, excluding any other amounts paid by the bank¹.

Similarly, the salaries of the other committee members are determined by an executive decree and borne by the Bank of Algeria. Committee members who are judges or employees return to their original institutions upon completing their term. In the event of retirement or death, they or their heirs receive compensation equivalent to two years' salary, covered by the Bank of Algeria, excluding any other payments from the bank. This provision also applies to committee members who do not assume any other paid position within the state, except in cases of dismissal due to gross misconduct².

It is evident that the Algerian legislator has placed great importance on financial compensation for the Governor of the Bank of Algeria, their deputies, and the committee members. This ensures that they can perform their duties and make decisions independently, as financial incentives serve as a strong motivation for them to carry out their supervisory role effectively.

1.2.2.2 Obligations of the Banking Committee Members

To ensure the independence of the Governor of the Bank of Algeria and their deputies, their position is incompatible with any elected office or any governmental or public function. Additionally, they are prohibited from engaging in any activity, profession, or function during their mandate, except for representing the state in international institutions of a monetary, financial, or economic character. To further reinforce their neutrality, they are not allowed to borrow any amount from any Algerian or foreign institution, nor can they accept any commitment signed by one of them in the portfolio of the Bank of Algeria or in the portfolio of any institution operating in Algeria³.

Moreover, the legislator has mandated the application of Article 28 of Law 23-09 on monetary and banking regulations. This article prohibits the chairman and members of the committee from disclosing any facts or information they have directly or indirectly obtained during their mandate, without prejudice to the obligations imposed on them by this law. However, this does not apply in cases where they are required to testify in a criminal case.

As for judges, they are bound by the obligations specific to their judicial duties as stipulated in the Statute of Judges. For example, a judge is prohibited from participating in any strike or inciting one and is also forbidden from joining any political party or engaging in any political activity of any kind⁴.

¹ Article 16 of Law 23-09 on Monetary and Banking Law.

² Article 118 of Law 23-09 on Monetary and Banking Law.

³ Article 15 of Law 23-09 on Monetary and Banking Law.

⁴ Organic Law No. 04-11, dated September 6, 2004, on the Fundamental Law of the Judiciary.

1.2.2.3 Authorities Responsible for Appointing the Banking Committee and the Duration of Membership

The President of the Republic appoints the members of the Banking Committee. Regarding their term of office, the legislator has set it at five years through a presidential decree¹.

Furthermore, members of this committee are not allowed to hold any other position or mandate, whether paid or unpaid, during their tenure².

The duration of the mandate ensures the independence of the regulatory authorities from the government. It creates a protective shield that prevents arbitrary dismissal. The term length should be reasonable — not too short to be ineffective nor excessively long — but relatively extended to ensure stability³.

2. Powers of the Banking Committee

The Banking Committee plays a fundamental role in ensuring that banks and financial institutions comply with the applicable legislative and regulatory provisions. Additionally, it has a disciplinary role, which involves penalizing observed violations. The committee also ensures compliance with professional conduct rules and determines the conditions under which banks and financial institutions operate, ensuring the quality and efficiency of their financial transactions.

2.1. Supervisory Role

Banking supervision is an administrative process primarily aimed at ensuring that banks and financial institutions operate in accordance with the applicable legal and regulatory provisions, as well as accounting and prudential standards. It also verifies compliance with established rules and standards to identify and correct errors and negligence⁴.

According to Article 120 of Law 23-09 on monetary and banking regulations, the committee is authorized to supervise all entities under its jurisdiction based on documents and on-site inspections. This is to ensure compliance with legislative and regulatory provisions concerning credit risk and related management activities by banks and financial institutions.

Field supervision by the Banking Committee follows a periodic program established and approved by the committee's deliberations. This involves visits to

¹ Article 117 of Law 23-09 on Monetary and Banking Law.

² Article 117 of Law 23-09 on Monetary and Banking Law

³ Aarabe Ahmed, Op. cit., pp. 236–237.

⁴ Lemari Walid, Boulhis Samia. The Role of the Banking Committee in Supervising Banking Operations, 2018, Vol. 05, No. 03. P. 412.

the headquarters of banks and their branches for full inspections and audits, which may also focus on specific activities. The results of these inspections are documented in official reports¹.

Thus, the committee has the freedom to determine its supervision program, the teams conducting the inspections, the format of reports, and the deadlines for submitting documents and information deemed necessary.

Upon completing the supervision process and verifying potential violations, the Banking Committee prepares an official notification document. This document provides a clear and precise summary of the violations attributed to banks or financial institutions. It is sent to the concerned party through non-judicial means that ensure secure and rapid delivery. These means include registered mail with acknowledgment of receipt, direct handover to the legal representative, or any other legally recognized reliable method of proof².

Furthermore, the committee has the authority to request any relevant individual³ to provide all necessary information, clarifications, and evidence for carrying out its mission. It may also demand that any relevant person submit documents or information, and professional secrecy cannot be invoked against the committee⁴. The committee can also request banks and financial institutions to provide all necessary information and clarifications to carry out its supervisory role transparently and effectively⁵.

Additionally, the committee can extend its investigations to financial relationships and shareholdings involving legal entities that directly or indirectly control supervised entities and all their subsidiaries.

Supervision can also be extended internationally under agreements, allowing oversight of Algerian companies' foreign subsidiaries⁶.

On-site supervision is assigned to the General Inspectorate through the Bank of Algeria's Inspection Unit, which is responsible for organizing inspections on behalf of the committee. The unit deploys inspectors, and the committee can appoint any individual to carry out the task. The inspectorate

¹ *Imane Jaber, Abdelkarim Mokka*. Banking Activity Between Supervisory Control by the Bank of Algeria and Repressive Control by the Banking Committee // *Journal of Legal and Political Research*, 2023, Vol. 08, No. 02. P. 336.

² *Khadija Sharafi*. Disciplinary Litigation Before the Banking Committee Under Law No. 23-09 on Monetary and Banking Law // *Journal of Research in Contracts and Business Law*, 2024, Vol. 09, No. 03. P. 75.

³ The legislator used the term "subjects" in the new law, whereas Amended and Supplemented Law 03-11, in Article 109, states that it is authorized to request from banks and financial institutions.

⁴ Article 121 of Law 23-09 on Monetary and Banking Law.

⁵ *Imane Jaber, Abdelkarim Mokka*, Previously Cited Reference. P. 33.

⁶ Article 122 of Law 23-09 on Monetary and Banking Law.

ensures proper operational conduct and strict compliance with professional standards¹.

At the end of the inspection, a report is prepared, analyzing the bank's or financial institution's structure, organization, activity evolution, risk development, and profitability. The report also details any observed deficiencies.

Finally, the inspection results are communicated to the boards of directors or equivalent governing bodies of companies subject to Algerian law, as well as to the representatives of foreign branches operating in Algeria and external auditors².

2.2. Disciplinary Role (Administrative Police)

While exercising its supervisory role to verify banks' and financial institutions' compliance with legislative and regulatory provisions, the Banking Committee is also granted the authority to impose preventive measures and disciplinary sanctions.

2.2.1. Preventive Measures

Warnings:

These are issued to alert bank and financial institution managers about legal violations or overstepping their authority. This is one of the mildest sanctions imposed on banks and financial institutions. Article 123 of Law 23-09 on monetary and banking regulations stipulates that in cases of professional misconduct, the committee may issue a warning after allowing the institution's managers to provide their explanations.

Orders:

The committee may summon any subject when their situation justifies it, taking all measures necessary to restore or support financial balance and correct management methods within a specified timeframe³.

2.2.2. Disciplinary Sanctions

They consist of:

Temporary suspension of one or more managers or termination of their duties:

The legislator stipulated in Article 125 of Law 23-09 on monetary and banking regulations that the Banking Committee may appoint a temporary

¹ Hajar Chamacha. The Banking Committee as a Legal Mechanism for Regulating the Banking Sector — A Comparative Study // *Journal of Human Sciences*, December 2021, Vol. 32, Issue 3. P. 398 and following.

² Article 122 of Law 23-09 on Monetary and Banking Law.

³ Article 124 of Law 23-09 on Monetary and Banking Law.

administrator who is granted all necessary powers to manage and operate the designated institution or its branches in Algeria. This administrator has the right to declare payment suspension. The appointment may be initiated by the managers of the concerned institution if they find themselves unable to perform their duties normally, or by the committee if it determines that the institution can no longer be managed under normal conditions. It may also be decided as one of the sanctions, including the temporary suspension of one or more managers with or without appointing a temporary administrator or the termination of one or more of those individuals with or without appointing a temporary administrator.

Warning and reprimand¹:

This is among the measures taken by the Banking Committee when a credit institution violates the principles of professional conduct. This measure may be published if the Banking Committee deems it necessary, and such publication could cause severe damage to the concerned institution².

Prohibition from engaging in certain operations and other restrictions on activity³.

Withdrawal of accreditation⁴.

Financial penalties:

The committee may impose financial penalties up to the minimum required capital, and the Public Treasury is responsible for collecting these amounts.

However, this provision should not leave any doubt about the nature of this penalty, as the text indicates the possibility of imposing it instead of disciplinary sanctions. However, the opposite must be considered, as these penalties combine both original disciplinary sanctions if imposed independently and complementary sanctions if imposed alongside another disciplinary measure⁵.

3. Mechanisms of the Banking Committee's Functioning

Banking Committee meetings are a fundamental organizational aspect of its work, given their role in managing and regulating the banking sector. During these meetings, key issues related to financial policies and the supervision of banks and financial institutions are discussed. These meetings also provide an opportunity for members to exchange opinions and make important decisions that impact the

¹ Article 126 of Law 23-09 on Monetary and Banking Law.

² *Kourai Samira*, previously cited reference, p. 646.

³ Article 126 of Law 23-09 on Monetary and Banking Law.

⁴ *Ibid.*

⁵ *Kourai Samira*, previously cited reference, p. 647.

stability of the financial system. Meetings are held periodically or exceptionally as needed.

3.1. Banking Committee Meetings

The committee holds its general sessions at its headquarters or any other location. These meetings must be chaired by the Governor, and the committee must meet at least once a month at the invitation of its chairman or at the request of four of its members. For meetings to be valid, at least four members must be present, and invitations are sent to them via the committee's General Secretariat¹.

As for regular meetings, the members of the Banking Committee meet periodically in ordinary working sessions at least once a week. The agenda is determined, and the discussed points are recorded by business coordinators. At the end of the meeting, a report is prepared, including all discussed points, signed by the coordinator and the General Secretary, and submitted to the Chairman of the Banking Committee. The chairman also has the right to assign one or more committee members specific tasks².

3.2. Voting

The Banking Committee's decisions are made by majority vote. In case of a tie, the chairman's vote prevails, as affirmed by the Algerian legislator in Article 119 of Law 23-09 on monetary and banking regulations.

Majority voting on the committee's decisions ensures that the adopted resolutions reflect the opinions of most members. The chairman's deciding vote is intended to prevent deadlocks in decision-making in case of a tie.

Conclusion:

Through this study, it has been concluded that the Algerian legislator has given great importance to the banking sector, as evidenced by the provisions of Law 23-09, particularly regarding the Banking Committee. This committee is a fundamental pillar of banking sector stability due to its supervisory and disciplinary roles in preventing or suppressing any violations.

However, it is observed that the legislator has maintained most of the legal provisions that previously governed the Banking Committee under the old law. Moreover, even under the new law, there is no explicit provision stating that the Banking Committee is an independent administrative authority.

Furthermore, the legislator has granted several guarantees to this committee to enable it to perform its duties independently, whether through its defined

¹ *Mohamed Nebhi*, previously cited reference, p. 79.

² *Mohamed Nebhi*, same reference.

composition or its assigned tasks. Nevertheless, this independence remains relative.

Additionally, the legislator has affirmed in this law that the Banking Committee is the sole authority responsible for adjudicating any violations committed by banks and financial institutions, particularly those related to risk exposure, especially credit risk and management practices.

Finally, we recommend:

— The necessity for the legislator to intervene in establishing a detailed legal framework for many points that were addressed but not precisely defined, such as the procedures for the committee's deliberations.

— The legislator should explicitly state that the Banking Committee is an independent administrative authority with legal personality and financial autonomy, similar to other independent administrative bodies.

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Information about the author

Siham Derbal (Maghnia, Algeria) — Lecturer Grade A of the Institute of Law and Political Science, University Centre of Maghnia (Al Shouhada District, Al Zawiyah Road P.O. Box 600-13300, Maghnia, Algeria; e-mail: s.derbal@cu-maghnia.dz).

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