



*The advisory role of independent administrative authorities (IAAs) in Algerian legislation*

Teleb Belkacem

university of Ghardaia (Algeria)

[dr.tbelkacem@gmail.com](mailto:dr.tbelkacem@gmail.com),

Abstract	Article info
<p><i>Algeria has undergone profound changes and reforms, especially in the economic sphere, since the 1990s. It has replaced traditional management methods with alternative mechanisms, aimed at covering the limitations of the state's roles, ensuring regulation, and guaranteeing the requirements of public services and the interests of stakeholders.</i></p> <p><i>By establishing relatively modern administrative bodies known by various names, including independent administrative authorities, it has addressed regulatory functions, particularly in sectors dominated by technical aspects and requiring specialization. The Algerian legislature has also endowed these bodies with additional discretionary powers, such as advisory roles, despite the significant importance of advisory roles in making sound decisions and developing effective policies.</i></p>	<p>Received April 15 ;2024</p> <p>Accepted May 18 ;2024</p> <p><b>Keyword:</b></p> <ul style="list-style-type: none"> <li>✓ independent administrative authority</li> <li>✓ regulatory authority</li> <li>✓ consulting function</li> </ul>

## **1. Introduction**

The shift from an interventionist state to a regulatory state in the economy marks a fundamental change in the roles of the state. Where once the state was deeply involved in directly managing industries and markets, the regulatory state emphasizes oversight. This transition acknowledges the complexities of modern economies and seeks to balance by focusing on regulation rather than direct intervention.

The regulatory state aims to create a level playing field for businesses while safeguarding the interests of society as a whole.

Historically, the Algerian state heavily controlled various sectors, including energy and telecommunications. However, Algeria has undergone a notable transformation since the 1990s in its economic management. There has been a gradual shift towards a more market-oriented approach, with increased emphasis on regulation. This transition reflects a recognition of the limitations of the economy and a desire to adapt to global market dynamics. Algeria's move towards a regulatory state signifies evolution in its economic management strategies.

The legal framework in Algeria has evolved substantially since the issuance of the 1989 constitution, this development, which is part of a perspective of liberalism, does not go without having effects on the

roles and missions of the state, effects which will normally and necessarily have repercussions on other public services. This shift was spurred by economic liberalization. With the state reducing its involvement in economic affairs, the Algerian legislator adopted legal instruments used in countries that have moved forward on this matter, particularly by emulating the French legal system. As a result, new structures termed independent administrative authorities. These bodies were entrusted with diverse functions intricately tied to overseeing the economy, particularly in the realms of economics and finance.

The independent administrative authorities have been assigned a range of functional competencies, whether fundamental or accessory. Among the most important of these competencies is the advisory role, considered necessary in making sound decisions. The advisory function is an inherent feature of modern management for sectors dominated by technical characteristics. Within this framework, the following problem arises:

- What are the reasons for assigning the advisory function to independent administrative authorities, and to what extent do they enjoy competency and advisory role according to Algerian legislation?

To facilitate the treatment of this problem, we break it down into sub-questions as follows:

- What is meant by independent administrative authorities, and what are the areas within their jurisdiction?

What are the reasons and justifications for creating independent administrative authorities in Algeria?

- What is the importance and value of the counseling function?
- How and to what extent do independent administrative authorities exercise their advisory role in Algeria?

To address this subject - which requires the combining both scientific research methodologies the descriptive method and the analytical method - it is possible to highlight the establishment and the justifications for the creation of independent administrative authorities in Algeria (firstly) before Exercising the advisory role by the independent administrative authorities in Algeria (secondly).

***First topic : The establishment and the justifications for the creation of independent administrative authorities in Algeria.***

The transition from a state that intervenes in economic affairs to a regulatory state necessarily involves abandoning traditional management patterns and adopting suitable administrative methods and means of

work according to what modern management allows. This often involves delegating operational functions to specialized governing bodies that operate with a high level of independence<sup>1</sup>. Within this general context falls the process of establishing independent administrative authorities. Hence, there is a need to first address the establishment and the justifications for their emergence, then to discuss their most important roles, whether fundamental powers or accessory tasks, and also the guarantees granted to them by the legislator to ensure their effective performance.

***First requirement: Independent administrative authorities an alternative regulatory mechanism.***

The transition from an interventionist state to a regulatory state necessitates updating traditional management methods. In this context, the government becomes a regulatory partner rather than directly intervening in economic sectors. This requires adopting innovative management approaches and establishing authorities that can adapt to ongoing changes and compensate for the functions of the previous state. It is crucial that these authorities be agile, responsive, and equipped with the necessary expertise to regulate and facilitate economic activities effectively. By establishing such adaptive authorities, the transition to a regulatory state can be smoother. This choice is

embodied through the creation of legal mechanisms known as "Independent administrative authorities". It is a relatively modern concept that first requires defining it and understanding the reasons for its adoption. Subsequently, tracking the developments taking place and the diversity of independent administrative authorities becomes essential.

***First section: the concept and the rationales for adopting the model of (IAAs).***

Before delving into the concept of independent administrative authorities and the reasons for their establishment, it is necessary to provide a brief historical overview of the emergence of these authorities.

***1) A historical overview of the emergence of the concept of (IAAs).***

The establishment of independent administrative authorities began in the late 19th and early 20th centuries in response to the need for specialized regulation in various sectors such as transportation, communications, and finance. The emergence of independent administrative authorities, also known as regulatory agencies or regulatory commissions, can be traced back to the United States. These bodies were created by Congress to oversee and regulate specific sectors of the economy or areas of public interest. They are granted a degree of autonomy from direct political control to ensure

impartiality and expertise in their regulatory functions. One of the earliest and most notable examples is the Interstate Commerce Commission (ICC)<sup>2</sup>, created in 1887 to regulate railroads and later expanded to include other forms of transportation. Over time, the scope and number of independent regulatory agencies have grown significantly, reflecting the increasing complexity of modern governance and the expansion of the regulatory state. Some of the most prominent regulatory agencies in the United States include, for example, the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), the Securities and Exchange Commission (SEC), and the Environmental Protection Agency (EPA)<sup>3</sup>.

Britain has followed in the footsteps of USA and many other European countries in establishing quasi-independent non-governmental bodies<sup>4</sup> to regulate and supervise various sectors and fields. These institutions are sometimes referred to as "independent public authorities" or "independent public bodies," and they enjoy a degree of independence from the main government in performing their functions. Among these institutions in Britain: British Broadcasting Corporation (BBC), Civil Aviation Authority (CAA), Centre for Ecology & Hydrology.

While France lagged behind the United States and Britain in implementing the model of Independent Administrative Authorities. The first emergence of Independent Administrative Authorities (IAAs) in France can be traced back to the late 20th century. These authorities, known as "autorités administratives indépendantes" (AAIs) in French, are specialized bodies separate from the executive branch of government, tasked with overseeing specific sectors or functions. They are designed to ensure transparency, impartiality, and expertise in their respective areas of jurisdiction. One of the earliest and most notable examples of an Independent Administrative Authority in France is the "Commission Nationale de l'Informatique et des Libertés" (CNIL)<sup>5</sup>, which was established in 1978. CNIL is responsible for safeguarding data privacy and ensuring compliance with data protection laws in France. Over time, the concept of IAAs has expanded in France to cover various areas such as telecommunications regulation, competition, audiovisual regulation, consumer protection, financial regulation. Each authority operates independently within its defined scope, with its own budget and decision-making powers, these authorities play a significant role in ensuring regulatory oversight<sup>6</sup> and protecting the public interest in their respective domains.

As for Algeria, it has benefited from countries that preceded it in this field,

especially France. It can be said that it replicated the French experience starting from the names down to the roles. The features of the Algerian experience appear in the elements discussed below.

## **2) *The definition of independent administrative authorities.***

Independent administrative authorities (IAAs) are specialized bodies vested with the authority to regulate and manage specific sectors autonomously<sup>7</sup>, free from direct interference by the executive or legislative branches of government. These entities are established to provide a legal and organizational framework conducive to their efficient and impartial operation. (IAAs) are regulatory bodies that operate separately from the executive branch of government. These agencies are typically tasked with overseeing specific sectors or industries, such as telecommunications, energy, or finance, and are granted a degree of autonomy from direct political interference<sup>8</sup>. This autonomy is designed to insulate them from short-term political pressures and ensure impartial decision<sup>9</sup>-making based on expert knowledge and regulatory frameworks. Independent administrative authorities often have the power to enforce regulations, adjudicate disputes, and issue licenses or permits within their respective domains. While they operate independently, they are still subject to oversight by the judiciary to ensure accountability and adherence to the rule of law.

The concept of independent administrative authorities comprises three main aspects<sup>10</sup>:

Firstly, the authority's exercise of power derived from its decision-making competence, which falls within the purview of the executive authority.

Secondly, it emphasizes the administrative dimension, particularly when the legislature depends on the authority's actions for law enforcement, subjecting it to administrative judicial review.

Thirdly, there's the absence of direct subordination to the executive branch, whether structurally or functionally.

### **3) *The characteristics of independent administrative authorities.***

The (IAAs) typically possess the following characteristics:

#### **3.1) Organizational Independence:**

Independent administrative authorities have the power to establish their own internal rules, procedures, and structures, allowing them to manage their affairs independently.

**3.2) Financial Autonomy:** These authorities manage their own budgets, enabling them to finance their activities without being dependent on direct government funding. This financial independence helps ensure their impartiality and effectiveness.

#### **3.3) Decision-Making Authority:**

Independent administrative authorities

have the discretion to make decisions within their areas of jurisdiction without external influence. This allows them to enforce regulations and policies impartially.

#### **3.4) Transparency<sup>11</sup> and Accountability:**

Despite their independence, these authorities are accountable to the oversight bodies. They are required to operate transparently, providing regular reports on their activities and finances.

#### **4) *the justifications for the creation of independent administrative authorities.***

Independent administrative authorities (IAAs) are established<sup>11</sup> for several reasons, often driven by the need to address specific challenges or ensure efficient regulation in certain sectors. Here are some justifications for their creation:

#### **4.1) Expertise and Specialization:**

IAAs are often created to regulate complex industries or sectors that require specialized knowledge and a high degree of issue-specific expertise<sup>12</sup>. These authorities can concentrate on understanding the intricacies of the sector they oversee, allowing for more informed and effective decision-making.

#### **4.2) Impartiality and Independence:**

By being independent from direct government control, IAAs can make decisions impartially, free from political influence or pressure. This independence helps maintain trust in regulatory processes and

ensures that decisions are based on merit rather than political considerations.

**4.3) Regulatory Flexibility:** IAAs can often respond more quickly to changing market dynamics and emerging challenges compared to traditional government agencies. Their independence allows them to adapt regulations and policies swiftly to address evolving needs without being bogged down by bureaucratic procedures.

**4.4) Independence and Accountability:** Although IAAs operate independently from direct government control<sup>13</sup>, they are still accountable for their actions. This independence allows them to act impartially and make decisions based on merit rather than political pressure. At the same time, IAAs are usually subject to oversight mechanisms<sup>14</sup> to ensure transparency and accountability in their operations.

**4.5) Confidence Building:** In certain sectors such as finance, telecommunications, or energy, the existence of an independent regulatory authority can instill confidence among investors, businesses, and consumers. It signals a commitment to fair competition, consumer protection, and the stability of the market, which can foster economic growth and development.

**4.6) Stability:** IAAs often have extend beyond electoral cycles, allowing them to engage in long-term planning and provide regulatory stability.

**4.7) Conflict Resolution and Dispute Settlement:** impartiality IAAs and expertise make them well-suited to resolving conflicts and ensuring that regulatory decisions are fair and equitable.

*Second section: The evolution and diversity of independent administrative authorities in Algeria.*

Since the introduction of the 1989 constitution, the legal framework in Algeria has undergone notable transformations, largely influenced by principles observed in liberal democracies. This shift was prompted by economic liberalization and the pressures of globalization. As the government scaled back its involvement in economic affairs to facilitate the development of a market-oriented economy, legislative efforts increasingly mirrored legal methodologies employed in Western nations, notably drawing from the French legal system<sup>15</sup>. This led to the creation of novel entities termed independent administrative authorities, entrusted with diverse responsibilities closely tied to overseeing the transitional economic landscape, particularly in economic and financial regulation.

The experience of establishing independent administrative authorities in Algeria is relatively recent. It began with the establishment of the High Council for Information in 1990 as an independent administrative authority endowed with legal personality and financial

independence<sup>16</sup>. Subsequently, the process of establishing independent administrative authorities in various sectors continued. Notable among these are:

- The Monetary and Credit Council (1990)<sup>17</sup>, The Monetary and Credit Council acts both as the board of directors of the central bank and as the administrative body issuing monetary, financial, and banking standards.
- The Commission for the Organization and Oversight of Stock Market Operations (1993)<sup>18</sup>, which constitutes the authority of the securities market.
- The Competition Council (1995)<sup>19</sup>, Responsible for the promotion and protection of competition.
- The Regulatory Authority for Post and Telecommunications (2000)<sup>20</sup>
- The National Mining Heritage Agency (2001)<sup>21</sup>
- The National Agency of Geology and Mining Control (2001)<sup>22</sup>
- The Electricity and Gas Regulatory Commission (2002)<sup>23</sup>, tasked with ensuring compliance with technical, economic, and environmental regulations, consumer protection, transaction transparency, and non-discrimination among operators.
- The Commission for the Organization and Oversight of Stock Market Operations (2003)<sup>24</sup>

- The National Agency for Pharmaceuticals for Human Medicine Use (2008)<sup>25</sup>.

And there's more. The Algerian legislator has adopted the French model regarding the establishment and organization of independent administrative authorities, and several designations have been utilized, such as: Council, Commission, Regulatory Authority, Agency, Regulatory Commission, Authority.

All of them are forms of a mechanism that was adopted by the Algerian legislator, creating and establishing a qualitative shift in the patterns of state intervention in a different, uncharacteristic and direct manner. This diversity is not limited to names, as in terms of the scope of intervention there:

- **General control authority:** Its scope of jurisdiction is horizontal and includes all public and private sectors, similar to the Competition Council.
- **Sectoral control authority:** Its functional scope is limited to a specific sector, and most of the aforementioned authorities fall into this category.

*Second requirement: Practice of competences and ensuring the independence of independent administrative authorities.*

In the founding texts, the scope of intervention of independent administrative authorities was determined, and the legislator granted them a set of powers and



competencies. It is necessary first to clarify what is fundamental and what is accessory to them, then address the guarantees of independence that allow the exercise of these powers and competencies in a satisfactory manner.

***First section: The fundamental powers, and accessory roles of independent administrative authorities.***

Independent administrative authorities (IAAs) are governmental bodies established to regulate specific sectors or areas of public interest independently from direct governmental control. Their fields of intervention can vary widely depending on the country and its legal framework. Nonetheless, IAAs commonly operate in the following areas:

1) the economic sphere<sup>26</sup> notably the competition and Antitrust Regulation: IAAs in this field ensure fair competition in markets, prevent monopolistic practices.

2) Telecommunications Regulation especially the audiovisual domain<sup>27</sup>: These authorities oversee the telecommunications sector, including issues related to spectrum allocation, licensing, consumer protection, and competition within the industry.

3) Financial Regulation<sup>28</sup>: regulate financial markets, including banking, insurance, and other financial services. They enforce rules to safeguard stability, and ensure fair and transparent financial transactions.

4) Energy Regulation: Authorities in this field oversee energy markets, including electricity, gas<sup>29</sup>. Infrastructure development, environmental standards, and competition within the energy industry.

5) Transportation Regulation: regulate various modes of transportation, including aviation<sup>30</sup>, railways, roads, and maritime transport. They enforce safety standards, licensing requirements, and fair competition practices.

6) Media Regulation<sup>31</sup>: IAAs have the authority to oversee broadcasting, telecommunications, and online media platforms to ensure freedom of expression, protect pluralism, and uphold ethical standards in media content.

7) Data Protection and Privacy (With the rise of digital technologies): IAAs often regulate the collection, storage, and use of personal data. They enforce data protection laws and ensure individuals' privacy rights are respected<sup>32</sup>.

8) Healthcare Regulation<sup>33</sup>: IAAs have responsible for regulating healthcare services, pharmaceuticals, medical devices. They ensure quality standards, patient safety, and fair access to healthcare services.

These are just examples, and the fields of intervention can vary from based on legal frameworks, institutional arrangements, and societal needs<sup>34</sup>. Additionally, IAAs may evolve over time to address emerging challenges and new areas. Currently IAAs play crucial roles in modern governance

structures. These entities are typically established by governments to perform specific regulatory<sup>35</sup>, supervisory, or oversight functions in a particular sector. Here are some of the key roles:

1) Regulation and Oversight: IAAs are tasked with regulating and overseeing specific sectors of the economy. This can include sectors such as telecommunications, energy, transportation, finance, competition, healthcare. Their role is to ensure compliance with laws, regulations, and standards within their respective domains.

2) Promotion of Competition: They may enforce antitrust laws, prevent monopolistic practices, and ensure a level playing field.

3) Consumer Protection: IAAs protect the rights and interests of consumers within their regulated sectors. This can involve monitoring product safety, ensuring fair pricing, investigating consumer complaints, and providing information.

4) Ensuring Compliance and Enforcement: IAAs have the authority to enforce regulations and laws within their jurisdiction. This may involve imposing penalties for non-compliance, and taking legal action against violators<sup>36</sup>.

5) Licensing and Authorization: In many cases, IAAs are responsible for issuing licenses, permits, or authorizations within their regulated sectors. They may set

criteria for eligibility and monitor compliance with licensing requirements.

6) Dispute Resolution: IAAs may serve as mediators or arbitrators in disputes between stakeholders within their regulated sectors. This can help to resolve conflicts efficiently and impartially, avoiding the need for costly litigation.

7) Policy Development and Advice<sup>37</sup>: IAAs often play a role in developing policies and regulations within their sectors. They may conduct research, gather data, and provide recommendations to policymakers based on their expertise and analysis.

Overall, independent administrative authorities play a crucial role in ensuring effective regulation, promoting competition, protecting consumers. Their independence from political interference is often seen as essential to maintaining public trust and confidence in regulatory processes.

***Second section: the guarantees of independence in exercising the functional powers of independent administrative authorities.***

Independent administrative authorities (IAAs) are bodies established by law to carry out specific regulatory or administrative functions independently from the government and other public bodies. The guarantees of independence for these authorities are crucial to ensure their effectiveness and credibility. In addition to the general legal and regulatory guarantees

here are some common guarantees of independence for IAAs:

1) Legal Framework: IAAs are typically established through legislation, which outlines their mandate, powers, and organizational structure. This legal framework often includes provisions to safeguard their independence, such as funding mechanisms.

- Stipulating organic and functional independence from other authorities<sup>38</sup>.

- The normative value of the establishment text (organic or ordinary).

2) Appointment and removal procedures: The process for appointing and removing members of IAAs is often designed to minimize political interference and ensure their autonomy<sup>39</sup>.

3) Composition: IAAs often have multi-member bodies or boards composed of individuals with relevant expertise and experience in the area they regulate. This composition helps ensure the authority's decisions are informed by technical knowledge rather than political considerations.

4) Budgetary independence: This financial independence reduces the risk of undue influence from the government or other external actors.

5) Decision-Making Autonomy: IAAs are typically empowered to make decisions independently within their mandate, without interference from government officials or other external parties.

6) Judicial Review: The decisions and actions of IAAs are often subject to judicial review, allowing affected parties to challenge them in court if they believe they have been made unlawfully<sup>40</sup>.

7) Transparency and Accountability: While IAAs operate independently, they are still accountable. They are often required to publish information about their activities, hold public consultations on significant decisions, and submit reports to relevant oversight bodies.

***Second topic : Exercising the advisory role by the independent administrative authorities in Algeria.***

In today's rapidly evolving landscape, characterized by technological advancements and a myriad of external factors, the task of making well-informed decisions within government administrations has become increasingly intricate and vital. Amidst these challenges, Independent Analytical Agencies (IAAs) emerge as indispensable partners. Leveraging their expertise and unbiased perspective, IAAs offer invaluable consultations that empower governmental administrations to navigate complexities and make sound, forward-thinking decisions that align with their objectives and serve the public interest effectively. It is necessary to provide a definition of counseling, as it involves Offering impartial guidance to management on an organization's strategy, structure, or operations is crucial for achieving its goals.

This advice is provided when internal expertise is lacking, in non-routine situations, and is time-limited<sup>41</sup>.

The study of the advisory role exercised by independent administrative authorities in Algeria necessitates, first and foremost, an examination of the importance of the counseling function and the various forms it takes. Subsequently, it should highlight the elements and limits of the consulting function of independent administrative authorities.

***First requirement: The importance of advisory role and the nature of consulting.***

The advisory role assigned to independent administrative authorities, even if occasional, carries equal importance and value, deserving recognition and appreciation (the first section). In this regard, it is imperative to explore the nature and extent of the obligation inherent in the advisory role of independent administrative authorities (the second section).

***First section: The importance of the counseling function.***

The technological advancements and the multitude of external influences are indeed among the factors that make sound decision-making for government administrations more complex and crucial. In this context, (IAAs) play a crucial role as partners for governmental administrations in crafting sound government decisions. They offer consultations, referring to the

process in which a governmental body or institution seeks advice or guidance from specialized experts in specific fields to assist in decision-making, policy development, or project implementation in a more effective and efficient manner. Government consulting encompasses a wide range of topics.

The aim of government consulting is to provide the necessary counsel and guidance to governmental entities to help them understand the challenges and opportunities they face, and to offer solutions and strategies to effectively address them. Expert consultants in this context collaborate with government agencies to provide reliable analysis, accurate data, and precise information to aid in making informed decisions and achieving desired goals.

(IAAs) offer consultations and provide high-level technical expertise in various fields such as information technology, enabling governmental entities to leverage this expertise in addressing complex issues or developing new projects. Additionally, they assist in ensuring project and service quality by reviewing plans and specifications, providing guidance for performance improvement, and achieving quality objectives. They also offer comprehensive assessments of potential risks and conduct technical feasibility studies. By providing strategic consultations on emerging technological advancements and how governmental

policies and strategies can adapt to them, they contribute to enhancing transparency and credibility in governmental operations. IAAs contribute significantly to enhancing the quality and effectiveness of governmental decision-making processes.

Overall, the advisory role of independent administrative authorities is essential for promoting good governance, fostering economic growth, protecting public welfare, and upholding the rule of law in democratic societies. Independent administrative authorities play a crucial role in modern governance structures, providing expert advice and oversight in various domains. Here are some key reasons why the advisory role of independent administrative authorities is important:

- **Expertise and Specialization:** Independent administrative authorities are often staffed with experts in their respective fields. This expertise allows them to provide specialized advice on complex technical, legal, or regulatory matters that may be beyond the scope of generalist policymakers or politicians.
- **Impartiality and Objectivity:** As independent bodies, these authorities are generally insulated from political influence or pressure. This independence enables them to offer objective advice based on evidence, analysis, and the public interest, rather than being swayed by partisan or short-term considerations.

- **Enhancing Accountability:** Independent administrative authorities can act as watchdogs, monitoring compliance with regulations and ensuring accountability within their respective sectors. By providing impartial advice and oversight, they contribute to transparency and trust in government institutions.

- **Promoting Fairness and Equity:** These authorities often play a role in enforcing regulations and standards to ensure fair competition, protect consumer rights, and promote equity in access to services. Their advisory function can help identify and address issues of inequality or discrimination within specific industries or sectors.

- **Strengthening Policy Formation:** The advice and recommendations provided by independent administrative authorities can inform the development of effective policies and regulations. Their specialized knowledge and experience can help policymakers anticipate potential challenges, assess the impacts of proposed measures, and refine policy objectives.

- **Crisis Management and Response:** During times of crisis or emergency, independent administrative authorities may play a critical role in coordinating responses, providing guidance to stakeholders, and ensuring continuity of essential services. Their advisory function can help mitigate risks and minimize the impact of unforeseen events.

To illustrate the significance of the advisory role played by independent administrative authorities in Algeria, it is imperative to examine a specific example wherein we assess the areas of intervention of a regulatory body, such as the Post and Telecommunications Regulatory Authority. This authority's mission is to provide an opinion in particular on<sup>42</sup>:

- All questions related to postal services and telecommunications.
- Setting maximum tariffs for universal postal and telecommunications services.
- The opportunity or necessity to adopt regulations regarding postal services and telecommunications.
- Development strategies for the postal and telecommunications sectors.
- Formulating any recommendations to the competent authority prior to granting, suspending, withdrawing, or renewing licenses.
- Proposing the amounts of contributions for financing universal service obligations.
- Participating in preparing Algeria's position in international negotiations in the fields of postal services and telecommunications.
- Participating in representing Algeria in relevant international organizations in the fields of postal services and telecommunications.

In this context, the advisory role of such authorities serves as a crucial mechanism

for informed decision-making and effective governance in the realm of post and telecommunications regulation.

***Second section: The nature and extent of the obligation inherent in the advisory role of independent administrative authorities.***

Consultations vary greatly and encompass a wide range of fields. From a legal standpoint, consultations can be categorized in terms of obligation into the following categories:

**A) *Mandatory consultations:*** are those in which parties are required to seek advice according to laws or regulations. With the existence of the legal text that imposes on some bodies the requirement to consult with independent administrative authorities, regardless of whether compliance with this consultation is mandatory or discretionary, the matter is related to the procedural necessity of obtaining the opinion of a specific consultative body, under penalty of nullity<sup>43</sup>. This can be illustrated within the provisions of Article 05 of Order 03/03, as amended and supplemented, which stipulates the possibility of regulating the prices of strategic goods and services after obtaining the opinion of the Competition Council<sup>44</sup>.

**B) *Optional consultations:*** refer to advisory services where entities have the choice to seek guidance or not, and where there is no legal or mandatory

obligation to follow the advice provided. These consultations typically involve providing information, recommendations, or suggestions on a particular topic or issue, but the decision to act upon the advice is entirely up to the individual or organization receiving the consultation. optional consultation can be classified into two types:

1. Consultation mandated by specific legal provisions, leaving it to the discretion of the competent administrative authority whether to request it or not. In this case, the administrative authority has discretionary power in deciding whether to seek consultation.
2. Consultations not mandated by law but initiated at the discretion of the competent authority. In this the administrative authority may request input from the relevant consultative body even in the absence of a legal provision allowing it to do so.

In both cases, the administrative authority is required to make the decision it deems appropriate, and it is not obligated to seek consultation. Therefore, it is not bound to follow the advice provided in the consultation, as long as there is no legal provision compelling it to do so.

In addition, self-notification or proactively taking on an advisory role by independent administrative authorities is another aspect to consider. This entails the IAAs voluntarily offering advice without waiting for a specific obligation or request to do so.

However, it's important to ensure that this proactive advisory role is conducted within the bounds of the law and does not overstep the authority or mandate of the independent administrative authorities. Any actions taken should be in alignment with the legal framework governing their operations and responsibilities.

***Second requirement: Elements and limits of the consulting function of independent administrative authorities.***

by building the advisory role of independent administrative authorities on strong foundations of independence<sup>45</sup>, expertise, transparency, accountability, adherence to the legal framework, effective communication, and continuous evaluation, decision-makers can harness their expertise to address complex challenges and make informed decisions. To strengthen this role several fundamental aspects must be carefully considered.

***First section: the elements of the consulting function.***

There are several key parties involved, these parties collectively contribute to the consultation process by providing diverse perspectives, expertise, and feedback, ultimately aiming to achieve more informed and inclusive decision-making.

- A) the consultant (Consultative Authority):** This party includes independent administrative authorities or advisory bodies that provide advice and guidance to relevant stakeholders,

based on expertise and specialization in a particular field. Here are some potential responsibilities and functions:

- **Policy Analysis:** analyzing existing policies, regulations, and legal frameworks. and evaluate the effectiveness of current approaches and propose recommendations for improvements or updates to better achieve regulatory objectives.
- **Legal and Regulatory Compliance:** interpret complex legal and regulatory frameworks relevant to their areas of jurisdiction. and provide guidance on compliance issues, identify potential gaps or inconsistencies, and suggest strategies for addressing regulatory challenges.
- **Strategic Planning:** developing strategic plans and objectives. This could involve conducting market assessments, identifying emerging trends or risks, and advising on proactive measures to enhance regulatory efficiency and effectiveness.

**B) the consult requester (Decision-Makers):** These are the entities responsible for making final decisions (the executive authorities) based on the advice and guidance provided by the consultative authority.

**C) Specialists and Experts:** These may be invited to provide specialized inputs and analyses in specific fields to enhance the decision-making process and ensure the scientific and technical basis of decisions.( After selection based on

criteria of integrity, responsibility, and capability<sup>46</sup>).

**D) Public and Affected Communities:** This party includes individuals, groups, and organizations that may be affected by the decisions and policies being made. This party may include citizens, companies, civil associations, and the local community.

The consultant, serving as the consultative authority, brings expertise and guidance, facilitating the process with their specialized knowledge and experience. On the other side, the consult requester, often decision-makers, seeks advice and insights from consultants to inform their decisions. Specialists and experts contribute their domain-specific knowledge, offering nuanced perspectives to enrich discussions and problem-solving. Additionally, the involvement of public ensures that diverse viewpoints are considered, fostering inclusivity and accountability in the decision-making process. Through collaboration and interaction<sup>47</sup>, a holistic understanding of issues is attained, paving the way for the formulation of effective strategies and the achievement of the best possible outcomes.

**Second section: the limits of the advisory function of the IAAs.**

The advisory role of independent administrative authorities (IAAs) typically has certain limitations, which can vary depending on the jurisdiction and the specific functions delegated to these



authorities. Here are some common limitations:

1) Lack of Binding Authority: One of the primary limitations is that IAAs typically have advisory powers rather than binding decision-making authority. While they can provide recommendations, guidance, and expertise to government bodies, their advice is not legally binding. Thus, decision-makers may choose to disregard their recommendations.

2) Limited Enforcement Power: IAAs may lack enforcement powers to ensure compliance with their advice or recommendations. Even if they provide guidance on regulatory compliance or best practices, they may not have the ability to enforce their suggestions directly.

3) Dependence on Cooperation: IAAs often depend on the cooperation of other governmental bodies, or organizations to implement their recommendations effectively. If these entities do not prioritize or act on the advice provided by IAAs, the impact of their advisory role may be limited.

4) Political Interference: Despite being independent in theory, IAAs may still face political pressure or interference, which could undermine their advisory role. Political considerations may sometimes override the recommendations of IAAs, particularly if the advice conflicts with the agendas or interests of policymakers.

5) Resource Constraints: IAAs may operate within resource constraints, limiting their

capacity to provide comprehensive advice or support. Budgetary limitations, staffing shortages, or other resource constraints may hinder the effectiveness of their advisory role.

6) Scope of Authority: The scope of authority granted to IAAs may be limited to specific sectors, issues, or functions. As a result, they may not have the mandate to provide advice or recommendations on certain matters outside their designated areas of responsibility.

7) Legal Constraints: Legal frameworks governing IAAs may impose limitations on their advisory role. For example, there may be restrictions on the types of advice they can provide, or the methods they can use to communicate their recommendations.

8) Complexity of Issues: The topics that independent administrative authorities advise on are often complex and multifaceted, requiring specialized knowledge and expertise. It can be challenging for these authorities to provide clear and actionable advice on such issues.

Despite these limitations, IAAs can still play a valuable role in providing expert advice. Their advisory function can contribute to informed decision-making and help address complex regulatory challenges, even if their recommendations are not always implemented directly.

### **Conclusion:**

This study is motivated by the significant changes occurring in the

establishment of independent administrative authorities in Algeria, particularly concerning the authorities, powers, and roles. This change is characterized by a greater emphasis on and support for establishing these authorities to achieve transparency, good governance, and reduce political interference in public administration. However, this trend is also marked by a lack of instability, as these bodies undergo legislative and practical changes relatively speeding up. Within this context, this study was launched with a simple yet vitally important question is about the reasons for assigning the advisory function to the independent administrative authorities, and the extent do they enjoy competency and advisory role according to Algerian legislation.

Following the analysis presented above, the study yielded several conclusions, including:

- Under the influence of various factors, Algeria has transitioned from a traditional approach to adopting modern management methods through the establishment and activation of independent administrative authorities in various fields.
- This development is a result of the global trend towards promoting the concept of good governance and achieving a balance of powers, wherein the establishment of independent administrative authorities is viewed as a fundamental step in this context.

- Delegating authority to Independent Administrative Authorities (IAAs) is a common practice in modern governance, and there are several reasons why governments opt for this approach.
- It is worth noting that these independent administrative authorities operate in a variety of areas, including financial oversight, environmental regulation, media and communications, consumer protection, among many others.
- Overall, delegating authority can offer governments a range of benefits, including access to specialized expertise, enhanced efficiency, improved accountability, and better risk management.
- The need to delegate decision-making to acknowledged experts, and particularly the desire to make a credible commitment, indeed seem to explain in large part why IAAs are created.
- These authorities play fundamental roles in regulating the sectors within their fields of intervention.
- the Independent administrative authorities are distinguished from traditional administrative bodies by their high efficiency in the field of regulation.
- Additionally, IAAs also undertake ancillary roles, such as advisory tasks.

- The advisory function of independent administrative authorities in Algeria is exercised episodically, in parallel with their oversight function, and varies between general advisory roles, which involve presenting opinions, suggestions, and recommendations on matters related to their field of competence, and specific advisory roles, such as proposing draft laws related to the sector they regulate.
  - The concept of independent administrative authorities underscores the notion that these entities operate autonomously, without direct hierarchical control or oversight from the executive branch. This autonomy is vital for them to fulfill their functions effectively, especially in areas like regulation, oversight, consulting, and enforcement, where impartiality and independence are paramount.
  - Independent administrative authorities possess the qualifications necessary to provide quality consultations through their organic and functional independence, efficiency, specialization, and composition.
  - The reality often diverges; while independent administrative authorities may possess formal autonomy, the persistent intervention or influence exerted by the executive authority can compromise this independence in practice.
  - As a result, the autonomy of these bodies becomes limited and relative, undermining their ability to act independently and effectively.
  - The advisory role may appear ancillary, but its significance should not be underestimated. IAAs provide critical insights, guidance, and expertise that can shape decisions and strategies in various fields.
  - The IAAs often bridge gaps in knowledge or experience, offering valuable perspectives that enhance problem-solving and decision-making processes, despite not holding executive authority.
  - IAAs wield considerable influence, contributing to the overall success and effectiveness of initiatives and organizations they advise. Thus, while their advisory role may seem supplementary, its impact is undeniably indispensable.
- After listing these results, we propose the following set of recommendations:***
- It's important for governments to carefully consider the design and governance structures of these IAAs to ensure that they operate effectively and in the public interest.
  - Scrutiny regarding the balance between preserving the independence of administrative authorities and ensuring appropriate accountability and oversight is essential.

- strike the right balance is crucial for maintaining the integrity and effectiveness of these institutions in serving the public interest.
- strengthening organic independence from the executive authority. This may entail legislative reforms, structural changes, or procedural safeguards aimed at safeguarding their independence and insulating them from undue political interference.
- It's important to enhance transparency by publishing activity reports of independent administrative authorities.

While it is important to acknowledge that this study was based on one country, overall, this article has helped to explain why Algeria has established so many Independent Administrative Authorities (IAAs). Furthermore, it has also contributed to strengthening the validity of the various reasons that explain the delegation of the advisory role to IAAs in general. In this regard, it has raised certain avenues for further study that need to be explored more fully, such as the fate of independent administrative authorities in Algeria. The presence of indications suggesting a transition from regulation by independent administrative authorities to traditional state regulation is evident.

### ***Sources & References Bibliography:***

#### ***1) Sources Bibliography:***

##### ***1) Legal Texts:***

**1.1)** Legislative Decree No 93-10 of May 23, 1993, relating to the stock exchange, official

journal of the People's Democratic Republic of Algeria, No. 34, Article 30.

**1.2)** Ordinance No. 95-06 of January 25, 1995, relating to competition, official journal of the P.D.Republic of Algeria, No. 09, Article 16.

**1.3)** Law No. 2000-03 of August 5, 2000, establishing general rules concerning postal services and telecommunications, official journal of the P.D.Republic of Algeria, No. 48, Article 11.

**1.4)** Law No. 90-07 of April 3, 1990, relating to information, official journal of the P.D.Republic of Algeria, No. 14, Article 59.

**1.5)** Law No. 90-10 of April 10, 1990, relating to currency and credit, official journal of the P.D.Republic of Algeria, No. 16, Article 19.

**1.6)** Legislative Decree No. 93-10 of May 23, 1993, relating to the stock exchange, official journal of the P.D.Republic of Algeria, No. 34, Article 03.

**1.7)** Ordinance No. 95-06 dated January 25, 1995, relating to competition, the official journal of the P.D.Republic of Algeria, No. 09, Article 16.

**1.8)** Law No. 2000-03 dated August 5, 2000, establishing general rules regarding postal services and telecommunications, the official journal of the P.D.Republic of Algeria, No. 48, Article 10.

**1.9)** Law No. 01-10 dated July 3, 2001, concerning mining law, the official journal of the P.D.Republic of Algeria, No. 35, Article 44.

**1.10)** Law No. 02-01 dated February 5, 2002, relating to electricity and the distribution of gas through pipelines, the official journal of the P. D. Republic of Algeria, No. 08, Article 111.

**1.11)** Law No. 03-04 dated February 17, 2003, modifying and supplementing Legislative Decree No. 93/10 of May 23, 1993, concerning

the stock exchange, the official journal of the P.D.Republic of Algeria, No. 11, Article 04.

**1.12)** Law No. 08-13 dated July 20, 2008, modifying and supplementing Law 85-05 of February 16, 1985, concerning the protection and promotion of health, the official journal of the P.D.Republic of Algeria, No. 44, Article 06.

**1.13)** Law No. 19-04 dated July 17, 2019, amending and supplementing Law 98-06 of June 27, 1998, establishing general rules regarding civil aviation, the official journal of the P.D.Republic of Algeria, No. 46, Article 02.

**1.14)** Law No. 15-04 dated February 1, 2015, establishing general rules regarding electronic signature and certification, the official journal of the P.D.Republic of Algeria, No. 06, Articles 16 – 18.

**1.15)** Law No. 08-13 dated July 20, 2008, amending and supplementing Law 85-05 of February 16, 1985, concerning the protection and promotion of health, the official journal of the P.D.Republic of Algeria, No. 44, Article 07.

**1.16)** Law No. 18-11 dated July 2, 2018, concerning health, the official journal of the P.D.Republic of Algeria, No. 46, Article 224.

**1.17)** Law No. 2000-03 dated August 5, 2000, establishing general rules regarding postal services and telecommunications, the official journal of the P.D.Republic of Algeria, No. 48, Article 13.

**1.18)** Law No. 08-12 dated July 19, 2008, pertaining to competition, the official journal of the P.D.Republic of Algeria, No. 36, Article 04.

**1.19)** The Ordinance No. 07- 01, dated March 1st, 2007, pertains to conflicts of interest and specific obligations related to certain positions and jobs, the Official journal, the P.D.Republic of Algeria, No. 16, Article 01.

**2) Other sources:**

- French Council of State, les autorités administratives indépendantes, rapport public 2001 (independent administrative authorities, public report 2001), studies and documents of the Council of State, N°52, France, 2001.

## II) References Bibliography:

### 1) Books:

**1.1)** Marie Anne Frison-Roche, le droit de la régulation (the law of regulation), Dalloz, No. 07, 2001.

**1.2)** Olivier Gohin, les institutions administratives (administrative institutions), 2nd edition, LGDJ, France, 1995.

**1.3)** Rachid Zouaimia, les autorités administratives indépendantes face aux exigences de la gouvernances (independent administrative authorities facing governance demands), Belkeise edition, Algiers, 2013.

**1.4)** Aweis Hamdi Abu al-Nour, الإدارة الاستشارية والإدارة القضائية في الرقابة عليها (Consultative Administration and the Role of the Judiciary in its Oversight: A Comparative Study), 1st edition, Dar Rim, Beirut, Lebanon, 2011.

**1.5)** Nader Ahmed Abu Sheikha, الاستشارات الادارية (management consulting), Sixth edition, massira publishing, distribution and printing, Jordan, 2014.

**1.6)** Milan Kubr, Management consulting. A guide to the profession, 4th edition, international labour office, Geneva, 2002.

### 2) Scientific articles:

**2.1)** Sandra Lavenex, Omar Serrano, Tim Bütthe, Power transitions and the rise of the regulatory state: Global market governance in flux, Journal Regulation & Governance, Volume15, Issue3, 2021.

**2.2)** Rachid Zouaimia, les autorités administratives indépendantes et la régulation économique (independent administrative authorities and economic regulation), IDARA

review, National School of Administration, Algeria, volume 14, N° 02, 2004.

**2.3)** Michael Cole, Quasi-Government in Britain: The Origins, Persistence and Implications of the Term 'Quango', journal Public Policy and Administration, volume 13, N°01, 1998.

**2.4)** Aiden Razika, Zouaimia Rachid, public independent authorities in Algerian law, critical Journal of Law and Political Sciences, Faculty of Law and Political Science, University of Tizi-Ouzou, Algeria, Volume 19 N° 01, 2024.

**2.5)** Mohamed Boumdouha, Abdelkader Cherbal, Algeria's experience in creating independent administrative authorities, jurisprudence journal, Biskra university, faculty of law and political sciences, volume 12, special issue, 2020.

**2.6)** Rachid Khelloufi, les institutions de régulation en droit algérien (regulatory institutions in Algerian law), IDARA review, National School of Administration, Algeria, No. 28, 2004.

**2.7)** Robert Elgie, Why Do Governments Delegate Authority to Quasi-Autonomous Agencies? The Case of Independent Administrative Authorities in France, journal : Governance, Volume 19, Issue 2, 2006.

**2.8)** Saskia Lavrussen, Maartje De Visser, independent administrative authorities and the standard of judicial review, institutional knowledge (InK) at singapore management

university, Utrecht Law Review / igitur, volume 2, issue 1, 2006.

**2.9)** Michael Howlett, Caroline Brouillette, Jack Coleman, Roman Skorzus, policy consulting in the USA: new evidence from the federal procurement data system-next generation, Lee Kuan Yew School of Public Policy, National University of Singapore, 2017.

### **3) scientific conferences:**

- Yavuz Göktaylar, The Rise of Independent Administrative Authorities in Turkey: A Close Look on Sources, Successes and Challenges of this New Institutional Transformation, 22nd European Regional Conference of the International Telecommunications Society (ITS2011), Innovative ICT Applications - Emerging Regulatory, Economic and Policy Issues, Budapest, 18 - 21 September, 2011.

### **4) University theses and dissertations:**

**4.1)** David K Zucker, The Origin and Development of the Interstate Commerce Commission and Its Impact on the Origination of Independent Regulatory Commissions in the American Legal System: A Historical Perspective, Thesis in the Field of History for the Degree of Master of Liberal Arts in Extension Studies, Harvard University, March 2016.

**4.2)** Philippe Icard, les autorités administratives indépendantes (independent administrative authorities), doctoral thesis in public law, University of Burgundy, Dijon, 1991.