

Republic of Turkey

PRIME MINISTRY

Directorate General of Laws and Decrees

Ref. No. : B.02.0.KKG.0.12/103-413/593

09/02/2006

Subject : The Government's Opinion

TO: PRESIDENCY OF THE TURKISH GRAND NATIONAL ASSEMBLY

Re: Your letter Ref. No. A.01.0.GNS.0.10.00.02-10140-2/413-10171/30917 DATED 04/04/2005.

Under " The Bill on Micro Financial Institutions" proposed by Aziz Akgül, Member of Parliament of Diyarbakır; principles and procedures for establishment, management, operation, liquidation and auditing of micro financial institutions which will operate to provide financial intermediary services such as loans, finance and insurance activities to enterprises with low income have been laid down.

As it is known, the Banking Law No. 5411 has been entered into force and effect as of 01/11/2005. Within the framework

of the said Law it is hereby thought that the system to be created in order to render service of micro finance should be constructed on the basis of the following three basic particulars and the Bill should be reviewed within the framework of these particulars.

1. In respect to healthy and sound development of the system and institution of a proper competitive environment in the financial system, principles and procedures for establishment and activities of micro financial institutions must be arranged in parallel to the requirements as sought for banks by taking into consideration also structures of these institutions.

2. In order to be able to establish and run an effective auditing mechanism, activities of micro financial institutions must be ensured to carry out through credit corporations.

3. In the event that such kind of institutions are to be provided with the authority to collect deposits, taking into consideration that an unjust competition environment may be created against credit companies which are other establishments collecting deposits, and that if their numbers become higher due to such type of establishments are subjected to rather lower capital conditions their control and

auditing by incorporating an effective auditing mechanism would be much more difficult, and along with weakness of auditing process, in contrary to the benefit expected from the system, in general the banking system would be in danger , and transactions which are out of control and inspection would both constitute contrariness to the ordinances concerning prevention of laundry of illicit money and lead to unrecorded operations, micro finance institutions should not be provided with the authority to collect deposits.

By the premises heretofore mentioned, I, the undersigned, de hereby submit the following particulars to your consideration that it would be proper that :

1. definitions of " Credit Corporation : Deposit Banks and Participation Banks operating in Turkey pursuant to the Banking Law No. 5411," and "Bank : Deposit Banks and Participation Banks and Development and Investment Banks operating in Turkey pursuant to the Banking Law No. 5411," are to be added to the 2nd Article of the said Bill; and that

2. the following phrase as shown in the 2nd Article of the Bill

- concerning definitions of micro finance institutions which accept and do not accept deposit is to be made single by

taking into account that micro finance institutions shall not accept deposits and such definition is to be amended as follows: " Micro Finance Institution: means institutions which have been operating to grant micro credits exclusively to micro entrepreneurs and to develop methods to enable them to attain banking and insurance services." ; and

- definitions of "Micro Finance", "Branch" and "Equity" are to be deleted from text of the Article; and that

3. the second section with caption "Micro Finance Institutions Accepting Deposits" and the third section with caption "Micro Finance Institutions Not Accepting deposits" in the Bill are to be transformed into one single section and within this context taking into account that micro finance institutions shall not accept deposits, Articles 3 and 14 of the Bill are to be deleted from text and the Bill should be rearranged accordingly; and that

4. conditions sought in founders of micro finance institutions are to be brought in parallel to those which have been sought for founders of bank as set forth in the Banking Law no. 5411, and that positions of public and private entities as envisaged to be founder in the Bill are to be evaluated and that for incorporation license of founders of

micro finance institutions provisions entailing creation of an correspondent relationship with a credit corporation so as to act as intermediary for extension of micro credits to micro entrepreneurs and for collection operation of the extended micro credits and submittal of the contract related therewith to the Administration are to be included in the Bill, and that

5. the Article with caption "Work and operations that micro finance institutions cannot carry out" of the Bill is to be rearranged within the framework of the foregoing particulars, and that

6. the minimum amount of capital to be sought in setting up of micro finance institutions must be set forth as at least six million New Turkish Liras provided that such amount is to be paid in cash and free from all sorts of simulation, and that

7. in the Article of the Bill related with extension of micro credits by micro finance institutions a provision to the effect that total amount of credit granted by these institutions shall not exceed five times of their de facto paid up capitals and that monies of donation nature which are irrevocable and unconditional and which have been acquired from domestic or foreign based real or juristic person parties

contingent upon obtaining permission from the Administration are to be added to their paid-up capitals must be included, and that

8. the paragraph pertaining to "auditing of activities and financial statements" of the Article of the Bill to be formed under the heading "accounts and recording arrangement, financial statements and auditing of micro finance institutions" is to be amended as follows: "Activities and Financial Statements of micro finance institutions are audited by professionals that obtained license and have the authority to carry out auditing pursuant to the Law No. 3568 of 1/6/1989 and inspection report issued as the result of these inspections shall be submitted to the Administration by the end of the month of March every year. The Administration may require when necessary that these inspections be conducted by independent auditing agencies having independent auditing power at banks." and thereafter other paragraphs are to be reviewed by taking into consideration above mentioned particulars and provisions of the Banking Law No. 5411, and that

9. a provision to the effect that banks are allowed to perform activities of micro finance institution without seeking any other conditions and that provisions pertaining to

tax exemptions and immunities as included in the Bill are to be implemented exclusively onto micro finance activities also for them should be introduced in the Bill, and that

10. taking into consideration provisions of the Banking Law no. 5411, a provision is to be introduced in relation with maximum interest rates to be imposed on credits granted by micro finance institutions and that Articles 24 and 25 concerning "punishment of heavy imprisonment", "punishment of heavy fine", "punishment of judicial fine" and "punishment of administrative fine" and the section with caption "Other Provisions" are to be drawn up again by taking into consideration applicable provisions of the Banking Law and taking into account that pursuant to the Law respecting Effectiveness and Implementation of the Turkish Criminal Code No. 5252 punishments of heavy fines are converted to judicial fines and punishments of heavy imprisonment are converted to punishment of imprisonment, and that

11. a provision concerning measures that may be taken due to the fact that credits to be extended for micro finance are to be granted to great number of customers and their redemption risks are high is to be added in the Bill and within this context, micro finance institutions' credits and information on their customers are to be conveyed to the Risk

Center at the Central Bank of Turkey and provision allowing that other establishments in the sector may follow up these risks is to be included in the Bill, and that

12. license for incorporation and commissioning into operation of micro finance institutions as shown in Article 15 of the Bill must be conditional upon availability of minimum capital and payment of dues at a certain ratio over the said amount for entrance to the system is to be effected, and that

13. provision regarding changes in partnership structure of juristic person partners who are shareholder at the rate of 10% or more in capital of micro finance institution at the rates to be specified are to be subjected to the permission of the Administration and in case of transfer of shares without permission partnership rights, except dividend, of the juristic person partner are to be used by the Administration or the Micro Finance Security Fund is to be added, and that

14. the provision reading as " sum of total credit to be granted to an entrepreneur shall not exceed 10% of equities for a micro entrepreneur." must be added in Article 19 of the Bill, and that

15. although Article 24 of the Bill envisages that administrative pecuniary fines shall be collected by the Ministry of Finance, reference is not made for their forfeiture to which corporation, therefore a change is to be made for forfeiture of these fines to the Micro Finance Security Fund, and that

16. a provision is to be included to the effect that certain amount of judicial pecuniary fines as provided in Article 25 of the Bill should be forfeited in revenue to the Micro Finance Security Fund in parallel to provisions of the Banking Law, and that

17. a provision concerning limit of donation to be made to Micro Finance Institution and transfer of indirect gains is to be added and that mechanism for fraudulent or deceitful bankruptcy is to be arranged and for which sanctions are to be laid down, and that

18. inasmuch as the fact that the Law No. 1412 respecting Criminal Procedures and the Law No. 3005 respecting "flagrante delicto" procedures have been annulled as of 01/06/2005, and furthermore the Law No. 2903 respecting Associations and the Banking Law No. 4389 have been rescinded, references made to these Laws in the Bill are to be rearranged, and that

19. in the Bill the term "micro credit" must be used in lieu of "credit", "Credit Institution" in lieu of "bank", "micro entrepreneurs" in lieu of " customers", "...services rendered" in lieu of "financial services provided by them", and since the term "Fund" is not included under the Article with heading "Definitions" this term must be changed as "Saving Deposits Insurance Fund" and that amounts in TL must be revised as New Turkish Lira (YTL).

(Signature)

Mehmet Ali ŞAHİN

State Minister and Deputy Prime Minister