



## Explaining the dimensions and components of governing commercial advertising in Iranian law

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### Abstract

Commercial advertising, as a key tool in economic development and consumer attraction, is influenced by jurisprudential, legal, and regulatory principles in Iranian law that aim to preserve human dignity, prevent deception and harm, and align with Islamic and social values. The dimensions governing this area include the cultural-ethical dimension (observing public modesty, avoiding extravagance and waste, and emphasizing spirituality instead of Western materialism), the economic dimension (supporting domestic production, preventing foreign dependence based on the rule of negation of the mustache, and prohibiting deceptive advertising in terms of quantity and quality of goods), the social dimension (preserving public rights, preventing the induction of false needs and abusing the gullibility of children), and the legal-supervisory dimension (multiple policy-making institutions such as the Ministry of Culture and Islamic Guidance, the Iranian Broadcasting Corporation, and municipalities, along with the lack of a comprehensive advertising law). Key components include: prohibition of deception and boasting (based on Articles 50-52 of the E-Commerce Law and jurisprudential rules such as the rule of loss and boasting), disclosure of identity and accurate information (Article 53 of the same law), protection of physical and mental health (Article 51), prohibition of unwanted advertising (Article 55), and special protection of children (advertising regulations and IRIB regulations, focusing on not showing dangerous scenes or encouraging purchases from strangers). Finally, this framework seeks to balance freedom of advertising and consumer protection by emphasizing criminal guarantees (such as fines in Article 70 of the E-Commerce Law) and the need for international coordination (such as EU directives), although there are challenges such as fragmentation of regulations and weak enforcement.

**Keywords:** commercial advertising, Iranian law, jurisprudential principles

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### 1- Introduction

Commercial advertising in its current form first came into existence with the industrial revolution, and with the passage of time and the growth of various industries, the increase in production and product diversity in the market, the expansion of global trade, and the competitiveness of its dominant environment, the need for advertising was felt more than before. Commercial advertising helps the buyer to make the best possible choice among various goods (Razavi et al., 2018: 3).

Common advertising styles and patterns in different countries follow the belief system along with the prevailing customs of the society and, on the other hand, influence it. The findings of studies conducted in the West also emphasize the existence of a correlation between "commercial advertising" and the "cultural values" of society. Therefore, some researchers have recognized the cultural concepts implied in

commercial advertisements as a suitable subject for examining the construction of the market, social values, and cultural beliefs, and have studied the mutual relationship between them. (Afkhami, 2008)

According to the studies conducted, it can be said that commercial advertising has emerged from its past simplicity with the passage of time and the increase in various products and the expansion of global trade and numerous advertisements for sale, and with regard to the media and internet and social networks that are becoming more diverse and effective day by day. It is not a simple expression for connecting consumers and producers, but is one of the emerging topics that has penetrated all aspects of human life and has overshadowed his life with worldly affairs. Commercial advertising is a powerful and influential tool that has affected today's social and economic life. One of the important issues that commercial advertising companies and agencies are facing today and is closely related to intellectual property rights is the issue of comparative advertising, which involves a company's use of a competitor's brand, trademark, trade name, logo, etc. to compare the features of the said company's goods or services with its own goods or services. What is clearly visible is the abuse by some for baseless advertising and meaningless and absurd slogans in order to profit and take advantage of the legal loophole in advertising, which in some cases causes harm to the direct rights of consumers. In terms of the conformity of commercial advertising with Islamic standards and jurisprudential rulings, they can be aligned with these jurisprudential rules: 1- Denial of harming others 2- Denial of fraud, deception and deception 3- Denial of extravagance and waste 4- Denial of lying 5- Denial of assisting in sin and the sanctity of the unworthy 6- Denial of harming others Regarding the legality of commercial advertising, considering the extensive economic, social and cultural effects that it entails, in terms of public interests and in order to maintain public order and consumer rights, it is necessary to establish appropriate laws and rules that can cover all aspects of advertising. Technologically, which is growing rapidly, especially in relation to e-commerce as a new phenomenon, completely allows merchants to advertise widely. Regarding the legislation on commercial advertising, there are important issues that are suggested to be considered by researchers, including 1- Guaranteeing appropriate implementation for dealing with bad advertising 2- Establishing a specialized institution to supervise commercial advertising 3- Establishing special regulations for radio and television commercial advertising. Therefore, Iranian law has not passed a special law in this regard, and the existing regulations are not sufficient to respond to the challenges that advertising companies and agencies raise in comparative advertising, especially regarding the possibility of violating intellectual property rights. There are no comprehensive and appropriate laws regarding commercial advertising in the general sense. Although there are scattered regulations, including in the Electronic Commerce Law as a new and emerging institution in Iranian law in this regard, these laws are either not guaranteed to be implemented or their implementation guarantees are not deterrent and do not keep pace with the growth of technology in this field. On the other hand, commercial advertising is deeply related to individual and social rights and forces governments to impose restrictions on the distribution and publication of advertisements by enacting special laws and regulations to protect the rights of citizens. These restrictions are the origin of considerations that mainly relate to maintaining social order and moral standards, respecting privacy, and protecting the rights of minorities, ethnic and racial groups, and nature, and usually differ in different countries depending on the legal and political system prevailing in society. Liability can be considered a function of the general rules of liability, but due to the increasing importance of commercial advertising and its connection to consumer rights, there is a need to establish new and specific laws in this field, for example, regarding whether minors and children can be the target of commercial advertising, and many other such issues.

## **2- Theoretical Approach**

### **The Jurisprudential Basis of Commercial Advertising:**

The study of the jurisprudential bases of commercial advertising in Islamic jurisprudence requires entering into extensive discussions such as the validity of transactions, fraud, deception, types of sale (buying and selling), and conditions attached to the contract. Islamic jurisprudence, as a comprehensive legal system, has not directly raised the term "commercial advertising" in the current sense, but the general rules governing the exchange of goods and services provide the necessary framework for assessing the

legitimacy or illegitimacy of this phenomenon. The main axis of these principles is the commitment to the principle of truthfulness (the principle of truthfulness) and the strict prohibition of any concealment of defects (concealing defects) and deception.

The most important principle in this regard is the need to achieve the "satisfaction" of the parties to the transaction, which must be achieved based on knowledge and awareness. The Holy Quran emphasizes that transactions must be carried out with mutual consent (An-Nisa/4:29). This "satisfaction" is achieved when the buyer is aware of all the characteristics of the goods, especially its hidden defects. From a jurisprudential perspective, any action that distorts this awareness, whether through an explicit statement of falsehood (blatant falsehood) or through an exaggerated and exaggerated description of the goods that causes ignorance of the buyer, is invalid or at least gives rise to the option of rescission. In jurisprudential books, there is a detailed discussion of cheating (fraud). Famous jurists consider cheating, even if it does not lead to explicit fraud, to be a disliked or forbidden act, because the principle of "the believer is the mirror of his brother" (the believer is the mirror of his brother) is violated. Shahid Awal points out in *Al-Lama' al-Damasqiyyah* that concealing a defect invalidates the sale or the buyer's right of option, and this ruling applies not only to inherent defects, but also to attributes that increase the price (Shahid Awal, 1410 AH, p. 305). This concept directly contradicts advertisements that exaggerate unrealistic advantages.

Also, in the discussion of "constitutional qualities" in sales, jurists emphasize the necessity of the goods being sold conforming to the description given by the seller. If the seller mentions a perfect quality for the goods (which is today equivalent to an advertising claim), and the goods do not have that quality, this sale is an example of "violation of description" and the customer has the right to cancel. Accordingly, commercial advertisements that contain imaginary or unprovable qualities, if considered as an implicit condition in the contract, provide a legal basis for the customer to object (Muhaqq al-Hilli, 1408 AH, vol. 2, p. 155).

In today's analysis, extensive commercial advertisements whose purpose is not merely to inform, but to arouse a strong desire to buy, must be assessed from a jurisprudential perspective. If this persuasion goes beyond the boundaries of honest description and enters the realm of inciting emotions or creating unrealistic expectations, on the one hand it results in wasting the property of another believer and on the other hand it conflicts with the principle of "requiring confidence" in transactions. Allameh Tabatabaei, in his commentary, emphasizes the importance of "truthfulness in speech" in all aspects of life and considers any concealment of the truth to be a form of oppression against another (Tabatabaei, 2013, vol. 2, p. 401), which is a fundamental principle that is the basis of the jurisprudential fight against misleading advertising. Talking and starting commercial advertising in Iran is somewhat complicated and there have been different speculations about it, while according to some, the history of commercial advertising in Iran dates back to about 98 years ago, i.e. 1300 AH, when the first commercial advertisement was published in the *Ettalaat* newspaper. Others believe that the first commercial advertisement in the press was published in the third issue of the *Vaqaat-e-Eftaqieh* newspaper, more than 150 years ago, and in October 1337 AH, when the private Iranian television station began operating, it had commercial advertisements from the beginning. Other historians have also written that "Abbas Mirza Nayib al-Saltanah was the first Iranian to advertise in the European press before the publication of a magazine in Iran," so the first Iranian advertisement is considered a press announcement. However, since there is no copy of it, we attribute the date of the advertisement in the Iranian press to the reign of Nasser al-Din Shah Qajar, which is more consistent with the available evidence. Thus, the first advertisement that was published in the press during the Nasser era was commissioned by a French businessman named "Monsieur Rojari," which was published in the sixth issue of the *Vaqayyah Eftagih* newspaper. (General Commercial Department of the Islamic Republic of Iran Broadcasting Organization, 1379, 59) In a division, the history of commercial advertising in Iran can be divided into two periods: before and after the revolution. It should be said that commercial advertising in Iran has a history of 150 years. The subject of the first commercial advertisement in Iran was the sale of a house in the Shah Abdul Azim neighborhood, which was published in the fourth issue of the *Vaqayyah Eftagih* newspaper in 1267 AH. With the arrival of television in Iran and its relative popularity among the people, commercial television advertising also began. With the increase in oil revenues in the 1950s, large companies gradually formed; while there were few media for advertising; that is, only one television

channel, which increased to two channels during the years of the Pahlavi regime. (Seyed Farid Ghasemi, 2012: 59)

In that period, advertising was in its infancy and did not have a solid foundation and was mostly influenced by commercial advertising from the West and did not consider moral and Islamic standards and values. After the victory of the Islamic Revolution, for reasons such as the dominance of anti-capitalist tendencies in the early years of the revolution, the special cultural atmosphere during the years of the imposed war, the conditions for the production and distribution of basic goods for which no necessity was felt for advertising, and the lack of conditions for complete competition in the market, the advertising field became smaller and smaller; so that until the final years of the war, the only commercial television advertising was advertising by banks, all of which were state-owned.

After the end of the war and the beginning of a new era of economic life in the country and the increase in manufacturing companies and the expansion of privatization, commercial advertising once again became important, but this time, unlike before the revolution, due to the prevailing value atmosphere in society, it began from the very beginning with many talks and hadiths about the necessity or lack of advertising, individual and social losses, dos and don'ts, and strategies for controlling and localizing it. (Mirzaei, 2011: 27)

However, the discussion of legislation in commercial advertising, based on the studies conducted, dates back to the constitutional era. The drafting of the Constitutional Constitution and its amendments in 1946 was the first step in drafting regulations in a manner that had been common in European countries for years before. The authors of the Constitutional Constitution looked at the issue of the press in several cases with a broad perspective and explicitly emphasized freedom of the press in Article 20. This principle emphasized: "The press, except for misleading books and materials harmful to religion, is free and censorship is prohibited in them. If anything contrary to the press law is found in them, the publisher or author will be punished according to the press law, but if the author is famous and resident in Iran, the publisher, printer, and distributor are immune from attack." In this constitution, the presence of a "jury" in handling political and press crimes is also recognized. The fourth title of the aforementioned law, which has an introduction, 6 chapters, and 52 articles, deals with advertisements or advertisements (Ismaili, 2003: 43).

### **3- Research Method**

The research method chosen for this study is a descriptive-analytical approach that is basically based on the library method and its main and central tool is the accurate receipt process.

### **4- Legal Definition of Advertising and Its Role in Competition in Iranian Law**

In Iranian law, the concept of advertising from the traditional perspective of civil law and Islamic jurisprudence is placed within the framework of the obligation to "state the truth" and avoid "deception". The Consumer Rights Protection Law in Iran considers advertising to be any process that aims to persuade the consumer to purchase goods or services, and its most important regulatory axis is to ensure the "accuracy of information" (Imani, 2018, p. 45). This approach is rooted in the principle of "informed consent" in contracts; that is, if the consent of the parties to the transaction is obtained through incorrect information, the transaction is fundamentally flawed. As a result, the main focus of the domestic legislator is more on the ethical and social aspects of advertising, namely avoiding direct deception and misleading the consumer regarding the nature or price of the product (Judiciary Research Institute, 2020, p. 110).

#### **•Laws governing misleading advertising (such as the Consumer Rights Protection Law)**

Laws governing misleading advertising in Iranian law have become more important, especially in recent years, due to the rapid growth of cyberspace and changes in competitive markets. One of the most important documents in this regard is the Consumer Rights Protection Law, which was passed in 2019. This law specifically addresses the issue of advertising, with the aim of creating a legal framework to protect consumers against misleading and unrealistic advertising.

This law, in Article 1, provides a precise definition of “misleading advertising” and defines it as any false or incomplete information that can affect the consumer’s will and encourage him to purchase a product or service (Mohaqq, 2020, p. 75). This article not only emphasizes the need for accurate information, but also points to the link between information and the consumer’s informed consent. In other words, if the consumer decides to purchase based on false or incomplete information, this can cause harm to his rights.

## **5- Commercial advertising in the Iranian legal system**

Existing laws regarding advertising applicable to commercial advertising

Commercial advertising in the Islamic Republic of Iran, despite its economic and market nature, is influenced by a set of civil, criminal laws, and regulations of regulatory organizations that are also rooted in the jurisprudential and ethical principles of Islam. A review of existing laws shows that there has been a widespread effort to align modern marketing tools with the requirement of honesty and avoidance of deception.

One of the most important legal foundations that overshadows all commercial advertising is the Consumer Rights Protection Law. This law directly prohibits any misleading advertising. Article 7 of this law explicitly states that suppliers of goods and services are required to present information and advertising content about their goods and services in a complete, accurate manner, and without the use of deceptive terms (Consumer Rights Protection Law, 2009, Article 7). This legal requirement is a direct reflection of the jurisprudential ruling prohibiting fraud and the need to describe the goods honestly, which was examined earlier. In jurisprudence, concealing defects or stating false characteristics invalidates the transaction, and this also leads to the right of termination for the consumer or even a fine for the advertiser in today’s legal context.

In addition to the Consumer Protection Law, there are several regulations in the field of advertisements and publicity, mainly set by the Ministry of Culture and Islamic Guidance and the Computer Guild Organization (in the case of electronic advertising). These regulations emphasize the need to avoid publishing content that is contrary to public order and good morals. This part of the legislation follows the same jurisprudential ruling that considers any commercial action subject to the non-promotion of content that is harmful to society. For example, in jurisprudence, if a product is forbidden, its advertising will also be forbidden; this ethical concept has been reflected in current laws as a ban on advertising unauthorized goods and services.

From the perspective of civil liability, if an advertisement leads to damage to the customer, the jurisprudential principles of civil liability, which are based on the need to compensate for damage caused by an illegal or immoral act, come into play. Although the concept of *gharar* is addressed in the civil code as an explicit provision under the title of “deception in a transaction,” modern advertising laws have expanded the scope of this liability by defining it more precisely as “misleading information.” Shahid Thani points out in *Masalak al-Afham* that if a seller maliciously mentions a characteristic that does not exist, the customer has the right to appeal, a principle that can be pursued today by citing misleading advertising (Shahid Thani, 1413 AH, vol. 1, p. 189).

Also, in the field of competition and the market, the Law on the Implementation of General Policies of Article 44 of the Constitution and the Regulations on Healthy Competition by the Organization for the Protection of Producers and Consumers restrict any commercial action that leads to the acquisition of a monopoly or abuse of market position. These regulations are in some way in line with the jurisprudential prohibition of hoarding. Hoarding is the storage of goods to create artificial shortages and increase prices; While today’s competition laws cover any attempt to distort the supply and demand mechanism through exclusive advertising or unfair contracts and have set penalties for it.

The laws governing commercial advertising in Iran have attempted to strike a balance between freedom of economic activity and the protection of the fundamental rights of consumers, relying on ethical and jurisprudential principles. Any advertising that involves an element of coercion (meaning unusual

psychological pressure or unfulfillable promises) or gharr (extreme ambiguity) is covered by consumer protection laws and can be prosecuted.

#### Legal and jurisprudential principles of commercial advertising

In Islamic jurisprudence, the true consent of the parties to the transaction is the basis for the validity of the contract, and any factor that distorts this consent will cause fraud or corruption. Advertising, due to its persuasive nature, is always at risk of issuing untrue statements. One of the central issues in this field is assessing the validity of the “principle of tolerance in transactions” in product descriptions against the need for “absolute honesty.” Mohaqiq Na’ini (1933 AH, vol. 2, p. 301) points out that in some descriptions where people are lenient in ordinary matters, the principle of tolerance applies; But this tolerance is provided that the transaction is not dominated by gross deceit. However, in the case of advertising, which aims to present an optimal image of the product, the prevailing view is based on the necessity of honesty. Allamah Hilli (1411 AH, vol. 1, p. 475) clearly states that any deceptive statement that leads to unrealistic satisfaction of the customer will cause the transaction to be corrupted. This ruling shows that in transactions and buying and selling, where the truth of the product must be made clear to the other party, the scope for tolerance is limited. The priority of honesty over tolerance becomes more apparent when we discuss the description of the product. Shahid Thani (1417 AH, vol. 1, p. 318) states in his book *Masalak al-Afham ila Sharay’ al-Islam* that if the seller gives a false description of the product, the customer has the right to cancel the contract. This right of choice is a Sharia mechanism for dealing with breaches of the oath of honesty, and it proves that even mentioning an untrue description—however seemingly small—destroys real satisfaction and disrupts the order of the transaction. From this perspective, commercial advertisements that encourage purchase by exaggerating or concealing facts fall within the realm of the prohibition of deception and fraud, because the true satisfaction of the customer is systematically threatened in this process.

The Iranian legal system has codified these ethical and jurisprudential principles into laws to provide a safe and transparent environment for commercial activities and consumers. In this regard, several legal documents monitor commercial advertisements, the most important of which are:

.1Electronic Commerce Law (approved in 2009): This law, which governs transactions in cyberspace, declares an explicit prohibition in its Article 51; this article prohibits any supply or presentation of misleading information in cyberspace that causes harm to the consumer. This ruling is directly consistent with the jurisprudential principles of negating gharar, as misleading information destroys the foundation of informed decision-making.

.2Consumer Protection Law (approved in 2009): This law guarantees consumer rights throughout the supply chain. Article 12 of this law emphasizes that suppliers of goods and services are required to provide consumers with accurate and truthful information. This legal requirement reflects the same priority of honesty discussed in jurisprudence and criminalizes any concealment or provision of false information.

#### 3- Cultural and Advertising Activities Regulations in the Matter of Assignments (approved in 2009):

This regulation should be defined in the interaction between two main areas: monitoring the assignment process (financial and legal) and monitoring advertising content (cultural and ethical.)

One part of the regulation is based more on the General Advertising Regulations and jurisprudential principles, but with a focus on the dimensions of assignment:

##### 1- Prohibition of false and misleading advertising (double honesty principle)

In divestitures, the risk of misleading investors is more serious than in consumer goods.

-Prohibited exaggeration of potential: Advertising that unrealistically exaggerates the profitability potential, production capacity, or actual value of the divested asset (such as using phrases such as “guaranteed and certain profit,” “the greatest opportunity ever”) is a clear example of deception and should be strongly prohibited.

-Advertising about debts and obligations: The Code requires that any advertising must clearly indicate whether the divestiture involves outstanding debts, environmental obligations, or open legal issues. Concealing these matters, even if not outright false, is a violation of transparency.

## 2- Respecting cultural principles and preventing destruction

Since this code contains the word "cultural", it focuses on identity and social aspects:

- Maintaining the dignity of the transferee: If the subject of the transfer is an important economic enterprise or a cultural/historical heritage, advertising should not lead to the destruction of the public image of that asset or institution (even if the transfer process is logical).

-Non-exploitation of occasions: Prohibition of using national, religious or public events to advertise a specific assignment in a way that questions the dignity of that event.

## 3- Requirements related to the identity of the advertiser (institutional transparency)

Advertisements must have a clear identity:

-Mention of the assigning authority: The advertisement must clearly specify which institution (e.g., the Privatization Organization, the Ministry of Economy, or the bank) has undertaken the assignment.

-Official approval: The advertising content must have the official approval of the institution overseeing the assignment to prevent the spread of rumor-based information.

## Laws governing commercial advertising in Iran

Commercial advertising in the Iranian legal system is not simply a marketing tool, but a legal act that, depending on its content, can affect the fundamental rights of consumers, the rules of fair competition, and in some cases, the general moral order of society. Legal examination of advertising requires simultaneous analysis of three main pillars: the jurisprudential and civil principles governing contracts, specific consumer protection laws, and regulatory regulations governing its content. In conjunction with the traditional principles, the fundamental principle that overshadows all commercial interactions is the need to avoid deception. Deception, which in jurisprudence means any act that deceives the other party in the transaction, is considered the core of the prohibition of misleading advertising (Emami, 2006, p. 214). This is more evident in large transactions such as complex assignments or investments; where concealing a fundamental defect or providing unsubstantiated financial forecasts can cause huge losses to the consumer. In this context, the concept of the option of violation of description is also always considered as a guarantee of the main civil enforcement against advertisements that provide a false description (Shahidi, 2018, p. 88).

Going beyond jurisprudential and civil foundations, the Iranian legislator in the modern era has established strict frameworks for controlling this area by enacting specific laws. The Law on the Protection of the Rights of Consumers and Owners of Goods and Services (approved in 2007), as the most important legislative document in this field, explicitly prohibits, in its Article 12, any advertising that "causes an unusual increase in the price of goods and services or causes the consumer to lose focus and attention" (Law on the Protection of Consumer Rights, 2007, Article 12). This article has a wide scope and also includes psychological pressure tactics and unrealistic discounts. The importance of this law lies in the joint liability for misleading information; This means that not only the main producer or supplier, but also all advertising intermediaries, including advertising agencies, distribution intermediaries and media, will be responsible for compensating the damage caused to the consumer if they participate in the dissemination of false or misleading information (Sotoudeh Tehrani, 2009, p. 234). This approach transforms moral responsibility into a comprehensive legal responsibility.

Examining the regulatory and enforcement gaps in the legal issues of advertising in the Iranian legal system

Examining the regulatory and enforcement gaps in the legal issues of advertising in the Iranian legal system is a very important issue due to the major impact of advertising on consumer behavior and the multitude of its types. The reality is that in the Iranian legal system, despite a set of laws and regulations, there are still weaknesses that can lead to a lack of efficiency in monitoring advertising. One of the most important

shortcomings in this regard is the lack of a single and independent regulatory body that covers all aspects of advertising. Currently, various institutions, including the Consumer and Producers Protection Organization and the Ministry of Industry, Mines and Trade, are active in this area, but the existence of several institutions with similar duties causes confusion and lack of coordination in the implementation of laws (Hassanzadeh, 2018, p. 25).

In addition, the issue of monitoring advertising in cyberspace has become a serious challenge due to the increasing use of the Internet and social networks. Current laws in this area are partial and in specific areas and are not easily able to respond to the rapid developments of this type of advertising. In other words, legal loopholes regarding online advertising have caused some advertisements to be misleading and undermined consumer rights (Kemali, 2019, p. 42). As a result, there is a need for a comprehensive legal and supervisory framework that specifically examines and regulates advertising in cyberspace.

Another issue is the lack of sufficient awareness and training for advertisers and businesses in the field of laws and regulations related to advertising. Many businesses, due to their lack of familiarity with relevant laws, unintentionally commit violations that can cause serious damage to brands. For example, misleading advertising or lack of transparency in providing product information can lead to heavy fines and ultimately damage public trust in the brand (Alizadeh, 2020, p. 15). However, establishing regular educational and information programs can help reduce these problems and, in a literal sense, lead to an improvement in the advertising situation in Iran.

In the Iranian legal system, the imbalance between the power of regulatory bodies and their legal powers is another challenge. Regulatory bodies must have access to the necessary legal tools to monitor and impose penalties commensurate with the violations. However, sometimes the penalties are not proportionate to the type of violation or are difficult to enforce. Also, the lack of effective legal mechanisms to follow up on consumer complaints causes many violations to remain unanswered and consumer rights to be ignored (Mohammadi, 1400, p. 33). For this reason, providing solutions to strengthen these sectors seems clearly necessary.

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