

ASSESSING RESTRICTIONS ON DATA FLOWS

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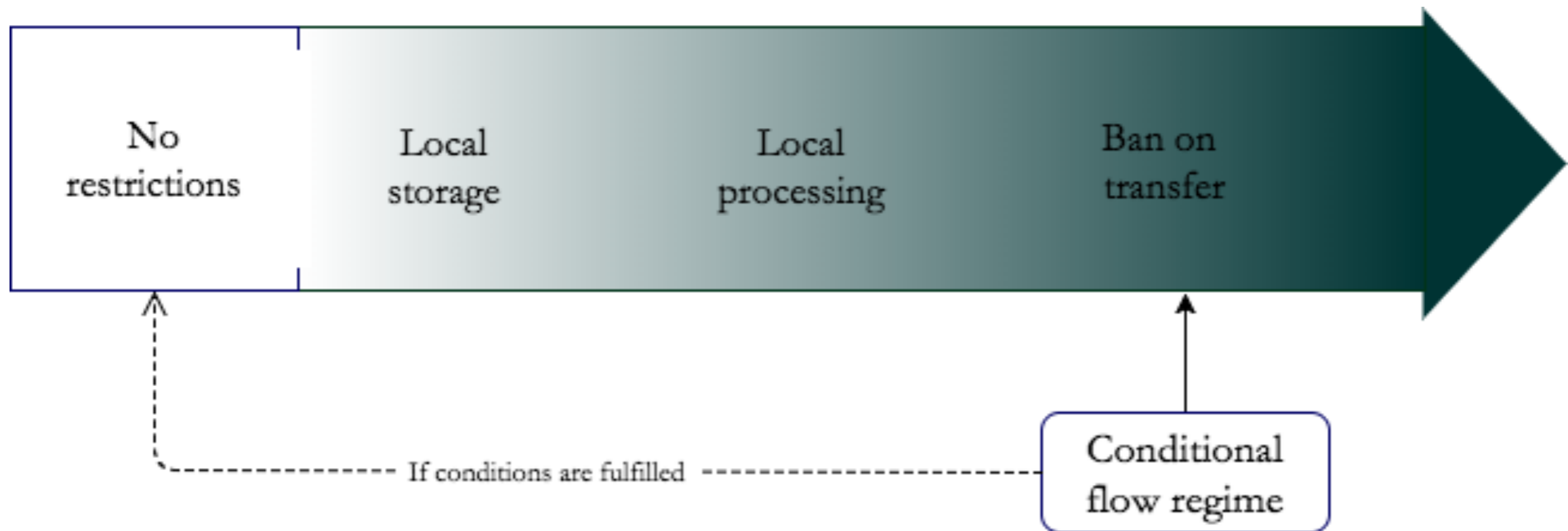
DOMESTIC POLICIES

- LACK OF DATA PROTECTION LAW
- DATA RETENTION
- DPO/DPIA
- ACCESS TO DATA BY GOVERNMENT

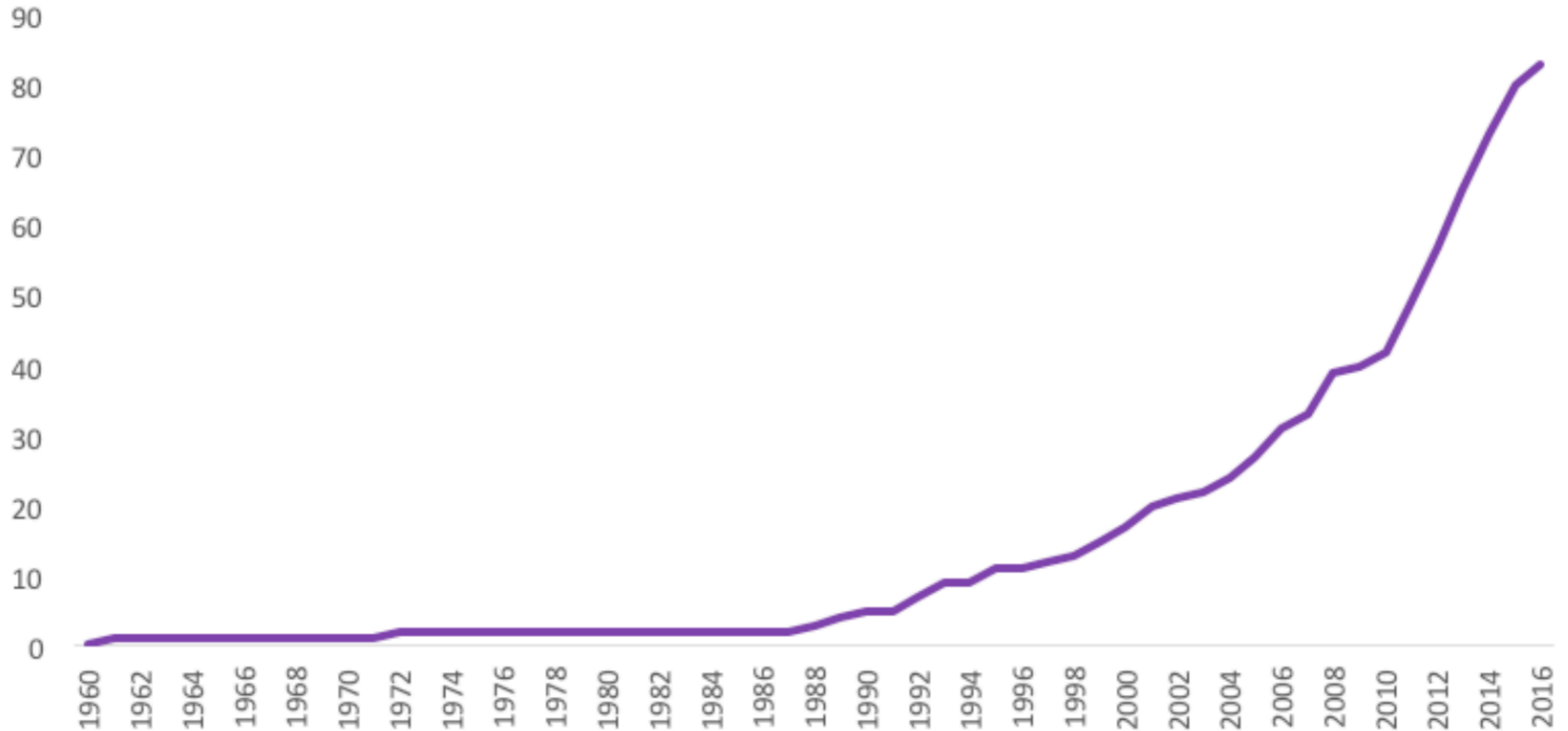
CROSS-BORDER POLICIES

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RESTRICTIONS ON CROSS-BORDER DATA FLOWS: A TAXONOMY



NUMBER OF RESTRICTIONS ON CROSS-BORDER DATA FLOWS



Source: Ferracane (2017) based on DTE database

Figure 5: Sectoral coverage of data locational measures

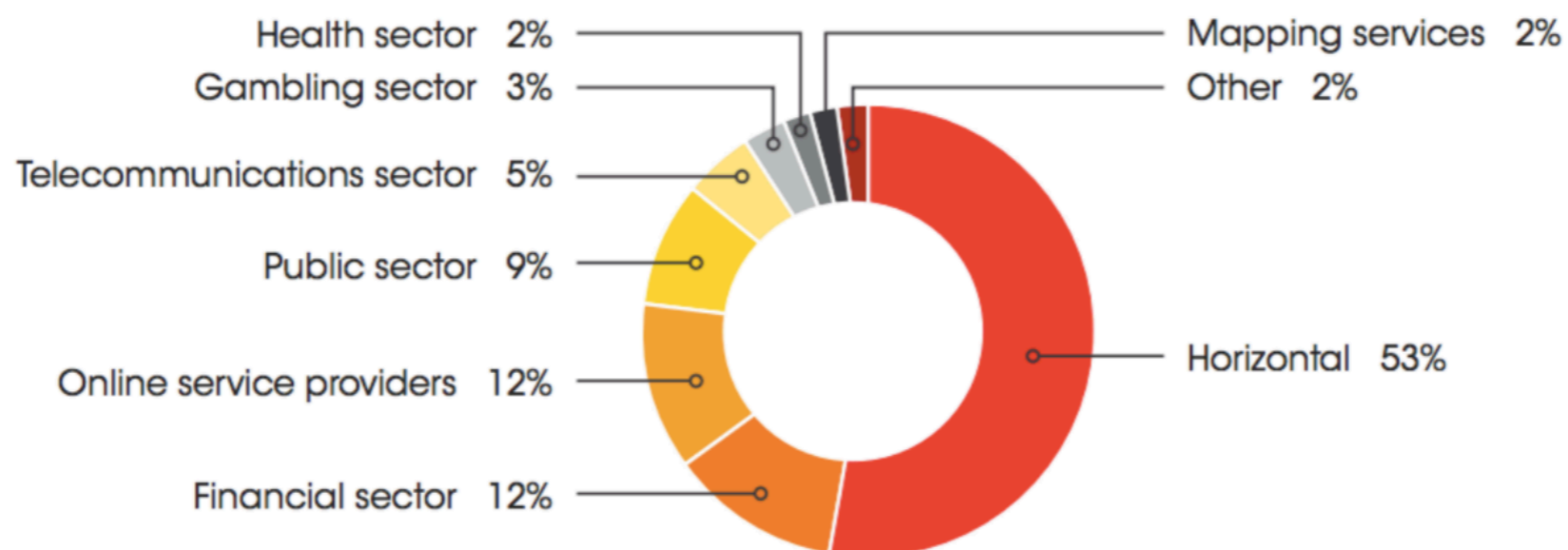
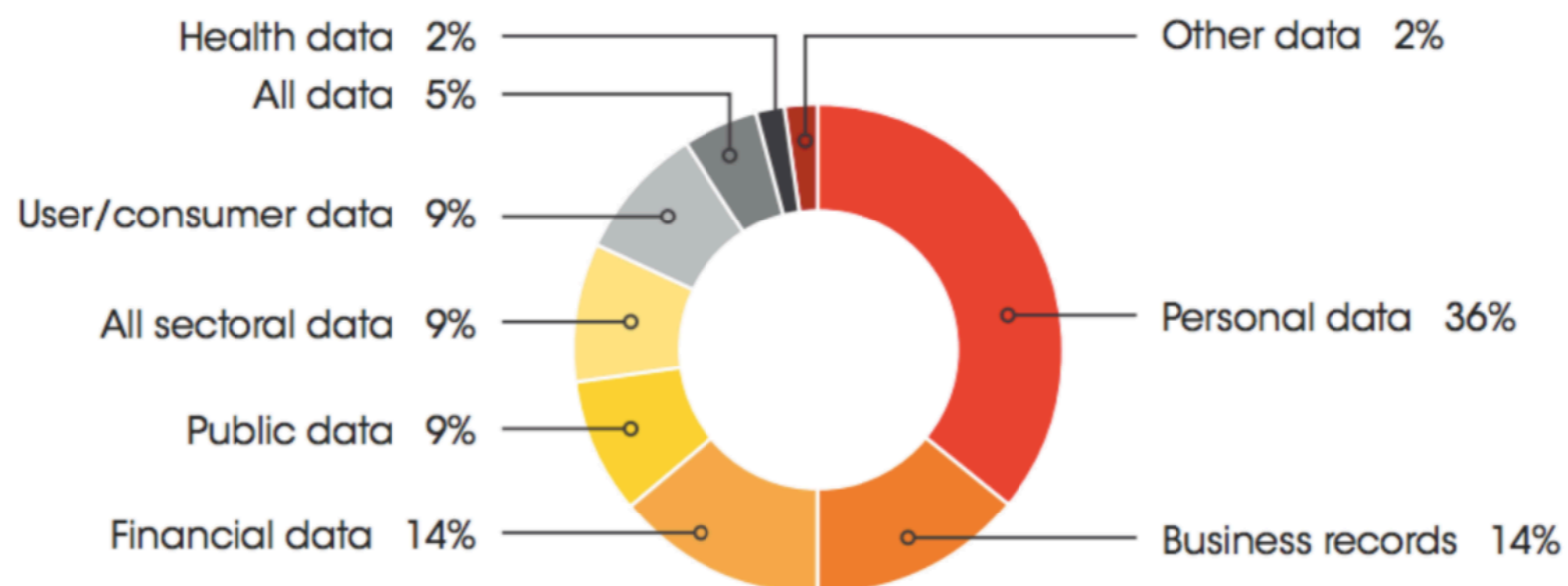


Figure 6: Type of data targeted by data localisation measures

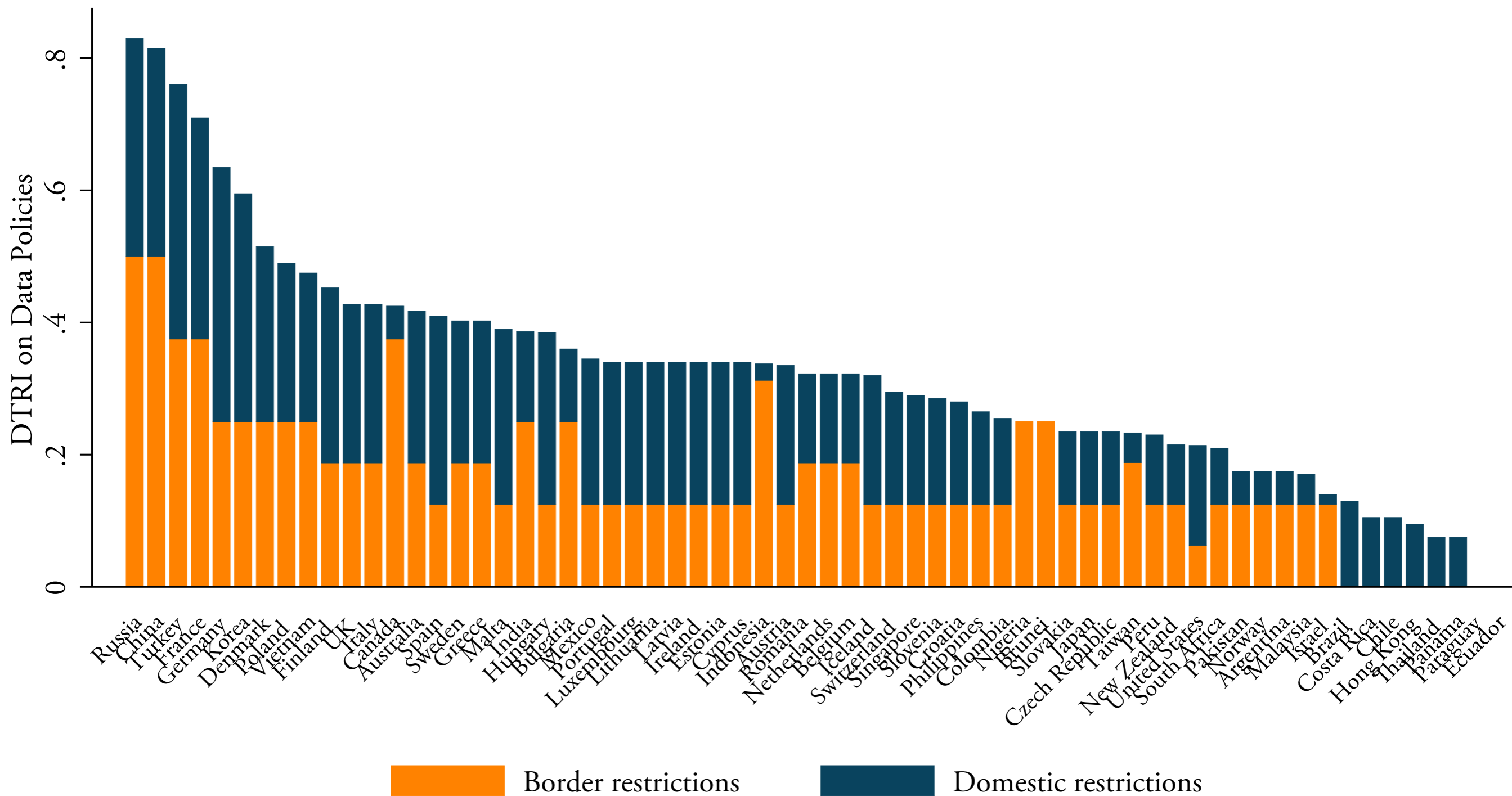


Source: Own calculations based on data retrieved from DTE database and consultation of national legal texts.

OPEN QUESTIONS:

DO THESE MEASURES IMPACT DIGITAL
TRADE?

DATA POLICIES: INDEX



Source: Ferracane and Van der Marel 2018.

THE COST OF DATA PROTECTIONISM

- STRICT CROSS-BORDER DATA POLICIES INHIBIT SERVICES' IMPORTS: average imports' increase 5 percent

(Ferracane & Van der Marel, 2018)

- STRICT DOMESTIC DATA POLICIES INHIBIT PRODUCTIVITY: average TFP gain 4.5 percent

(Ferracane, et al., 2018)

RESTRICTIONS ON PERSONAL DATA FLOWS: ANOTHER TAXONOMY

OPEN TRANSFERS

Self-certification; self-assessment schemes; ex-post accountability, etc.

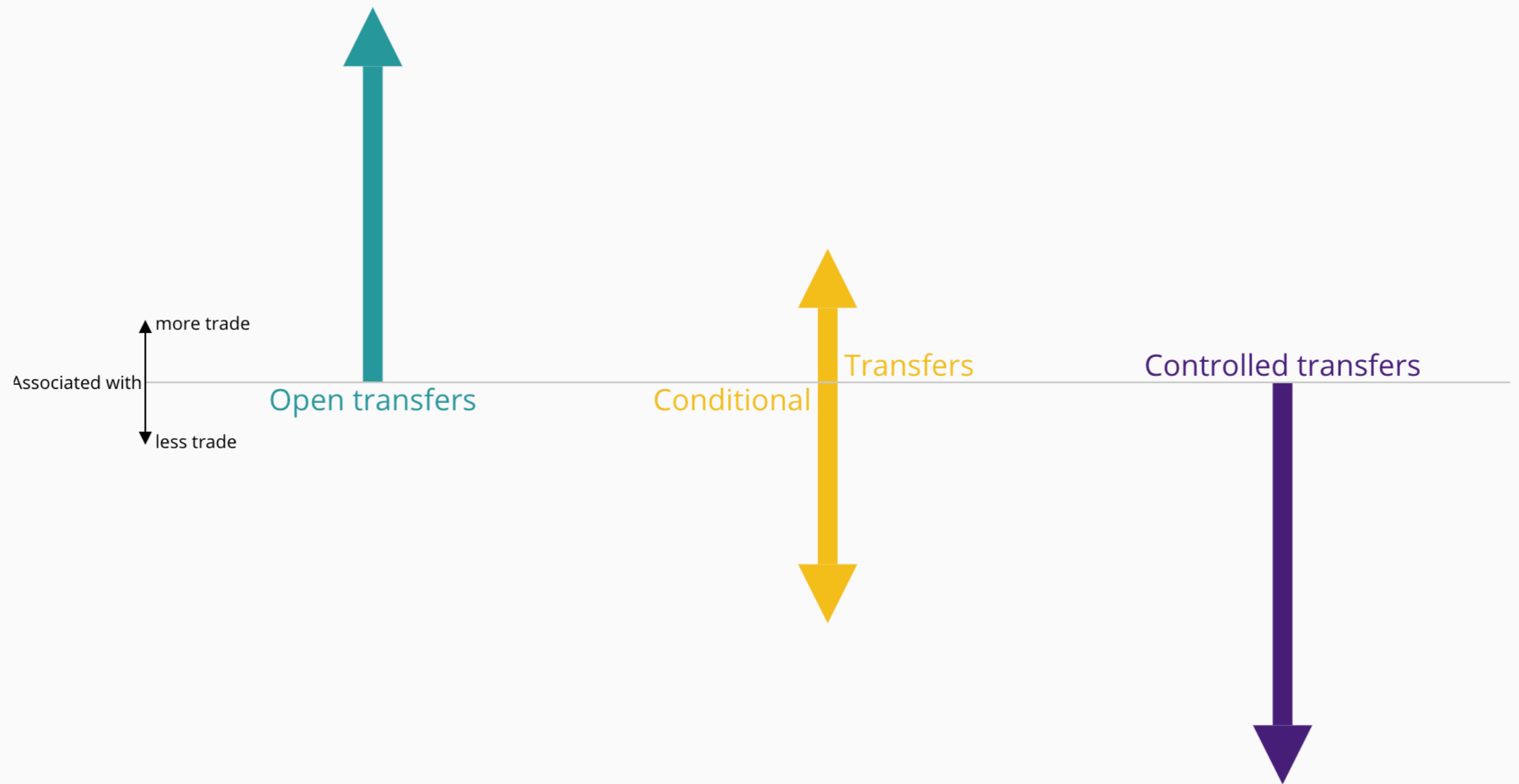
REGULATORY SAFEGUARDS

Conditions to be fulfilled ex-ante: adequacy, binding corporate rules (BCR), standard contract clauses (SCCs,) data subject consent, codes of conduct,...

CONTROLLED TRANSFERS

Strict conditions: bans to data transfers; local processing requirements: ad hoc government authorization; infrastructure requirements; ex-ante security assessments...

PERSONAL DATA POLICIES



Source: Ferracane and Van der Marel (2021)

OPEN QUESTIONS:

WHICH WEIGHT SHOULD WE ASSIGN TO
THE DIFFERENT TYPES OF MEASURES?

OPEN QUESTIONS:

WHICH APPROACH CAN BE CONSIDERED
TO BE A 'BEST PRACTICE'?

TAKE INTO ACCOUNT THE POLICY OBJECTIVES...

1. PRIVACY
2. NATIONAL SECURITY
3. CYBERSECURITY
4. LAW ENFORCEMENT
5. DATA SOVEREIGNTY
6. INDUSTRIAL DEVELOPMENT
7. PROTECTIONISM...

OPEN QUESTION:

WHAT ABOUT BILATERAL/PLURILATERAL/
SECTORAL COMMITMENTS ON FREE
FLOWS OF DATA?

CPTPP (2018)

“Each Party shall allow the cross-border transfer of information by electronic means, including personal information”

“No Party shall require a covered person to use or locate computing facilities in that Party’s territory as a condition for conducting business in that territory”

- Exception to achieve “a legitimate public policy objective”
- Carve-out of financial services

OTHER ARRANGEMENTS

1. APEC Cross-Border Privacy Rules (CBPRs) (2011)
2. OECD Privacy Principles
3. ADEQUACY DECISIONS
4. PRIVACY SHIELD
5. CONVENTION 108, MALABO CONVENTION, ETC..
6. SECTORAL ARRANGEMENTS