

# The nature, evolution and potential implications of data localisation measures

Janos Ferencz

Based on paper with Javier López-González and Chiara del Giovane

Trade Policy Division, OECD

Arangkada Philippines Policy Discussion on Managing Cross-Border Data  
Flows: Regional/Global Experiences and Good Practices

16 August 2023





# What is data localisation?

There is **no single definition of data localisation**. However, there is agreement that its consequence is more local data storage than would have otherwise taken place.

Different views on what types of measures might fall within remit of data localisation:

- **Explicit** (or direct) measures: those which directly legislate on the location and/or processing of data.
- **Explicit and Implicit** (or indirect) measures: such as restrictions on cross-border data flows (Cory and Dascoli, 2021 or Svantesson, 2020)

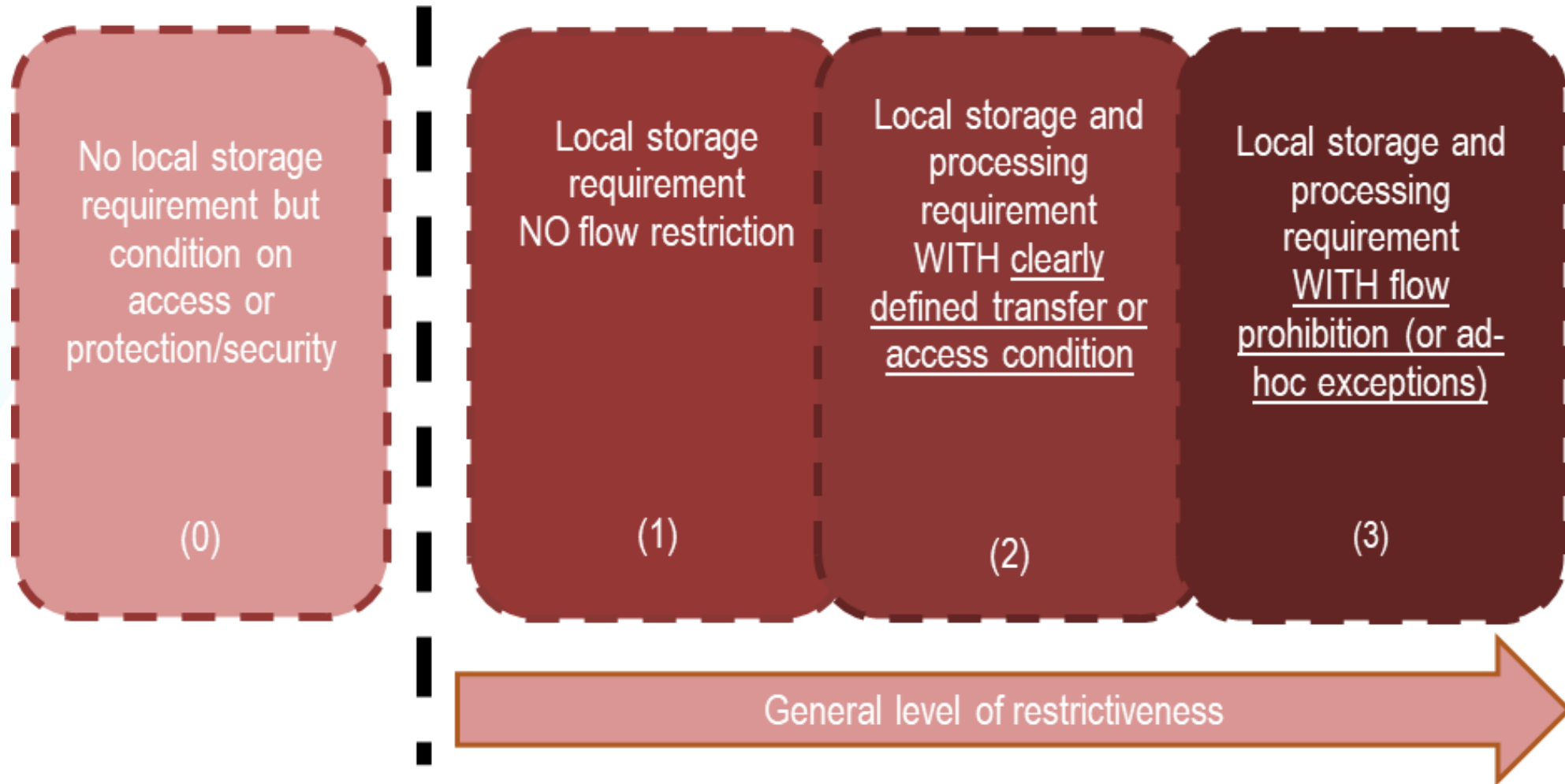
Narrower definition taken in paper avoids subjective discussions about what other measures might or might not lead to more local storage or processing (privacy, tariffs, local presence requirements):

***explicit requirements that data be stored and/or processed within the domestic territory.***

Distinctions often made between different forms of data localization – unjustified, forced. Reflects degree of ambiguity – not all data localization measures might raise concerns.

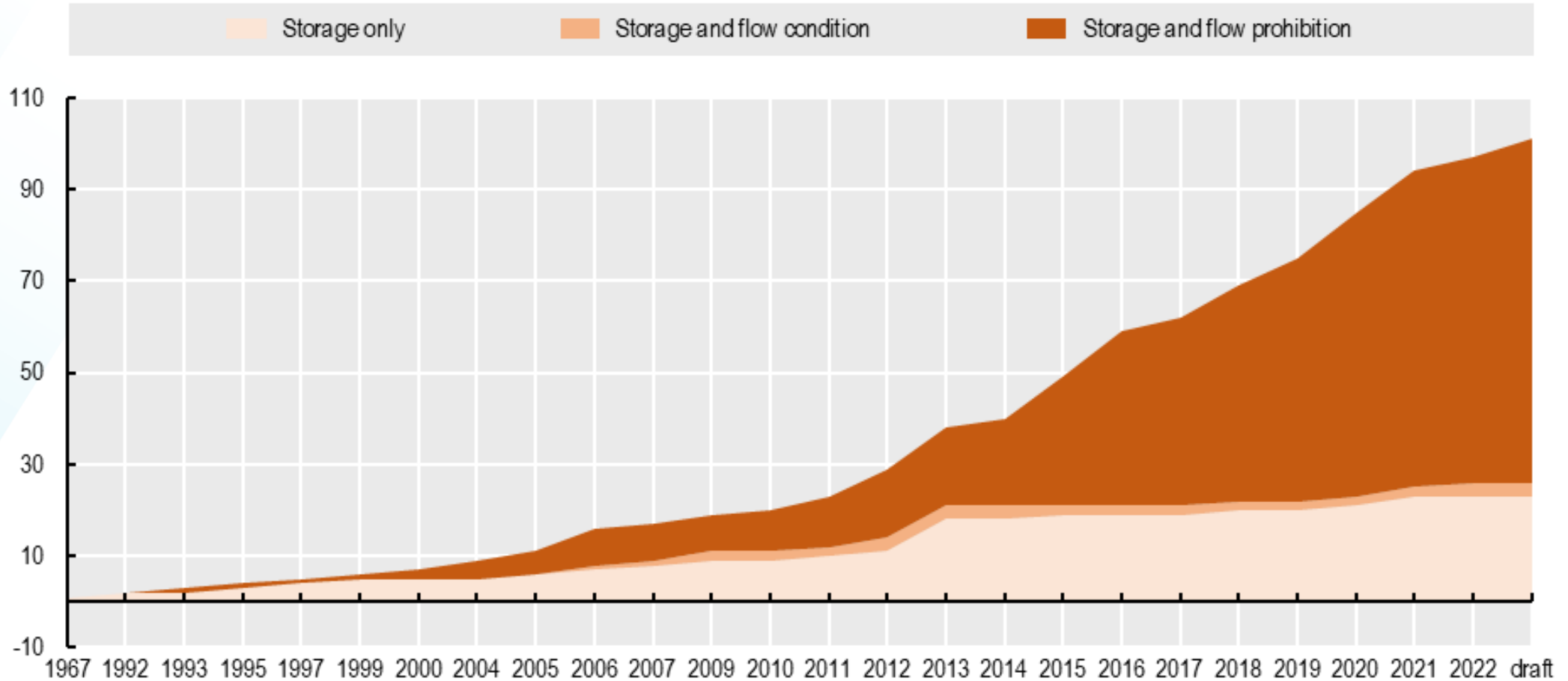


# Three main approaches to data localisation



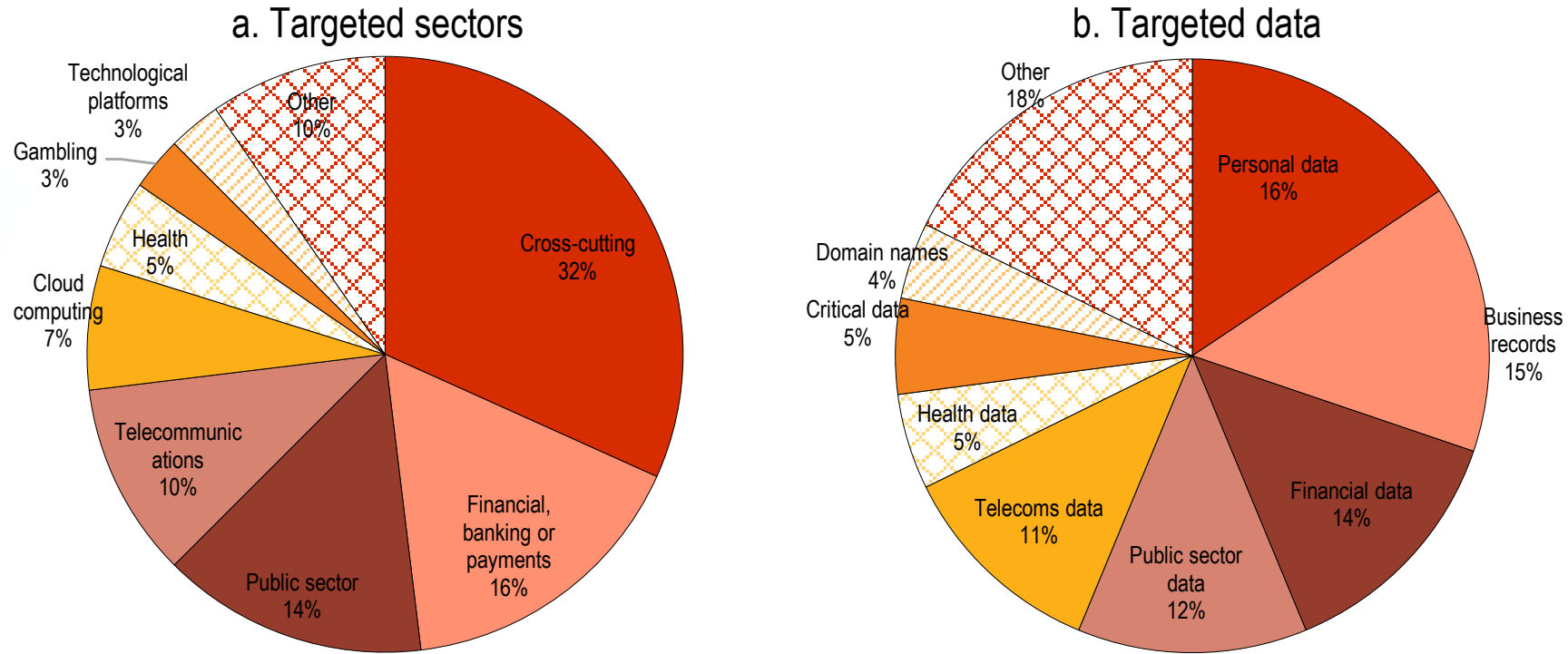


# Data localisation is growing and becoming more restrictive





# Data localisation measures target specific sectors and types of data





# Identifying the economic and societal impact of data localisation is complex

Cost/benefit analysis difficult:

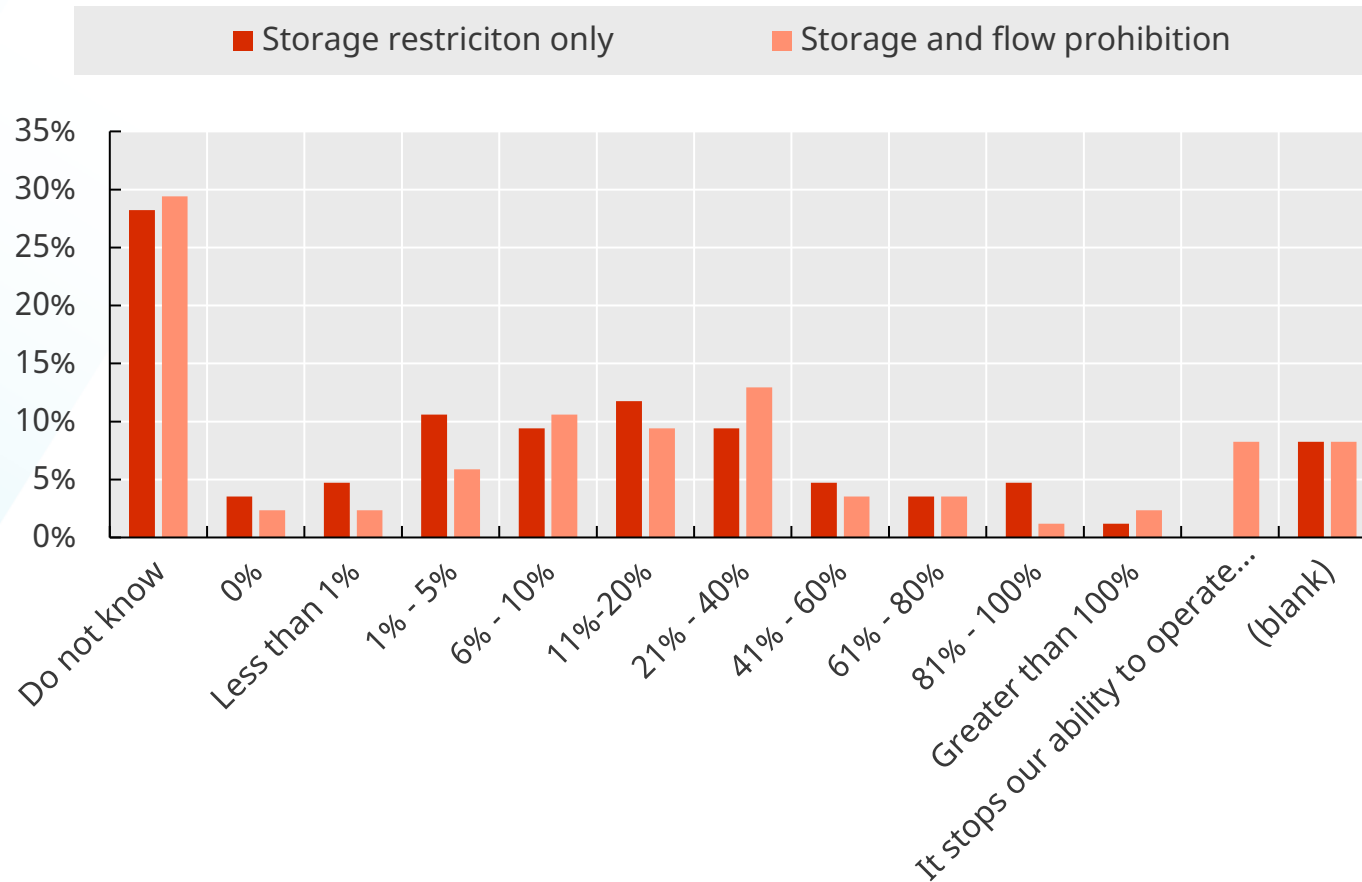
- **Assessing benefits:** Many measures in place to meet legitimate public policy objectives (hard to put 'dollar value' on these and to assess what is or is not a legitimate public policy objective).
- **Assessing costs:** can be more straightforward. Storage requirements will affect costs, depending on the type of measure and extent to which businesses rely on digital solutions

No data on data, so useful to engage in business consultation exercises:

- OECD/WTO targeted questionnaire (Small sample of 85 businesses across 32 countries covering most sectors of economic activity)
- Case studies to identify perceived impacts (e-payments, cloud computing, air travel)



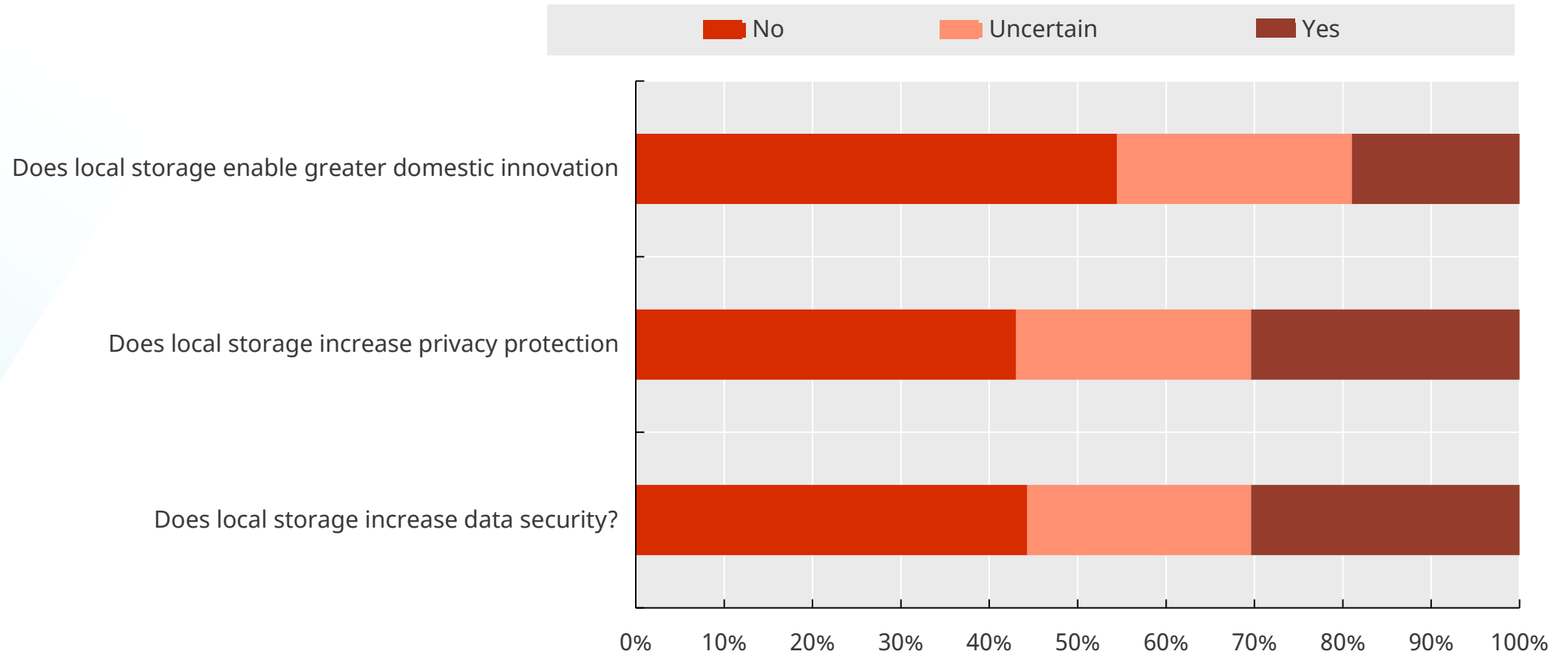
# Data localisation measures perceived to represent 16-55% increases in data management costs



- **Cat 1** can increase data management cost by 16%
- **Cat 3** may lead to increases in data management costs of 55%
  - 8% of respondents said that more prohibitive data localisation measures would **stop their ability to operate internationally**
- **But also a degree of uncertainty about costs**



# Perception that these might not help deliver other legitimate public policy objectives







# Case study 1: cross-border e-payments

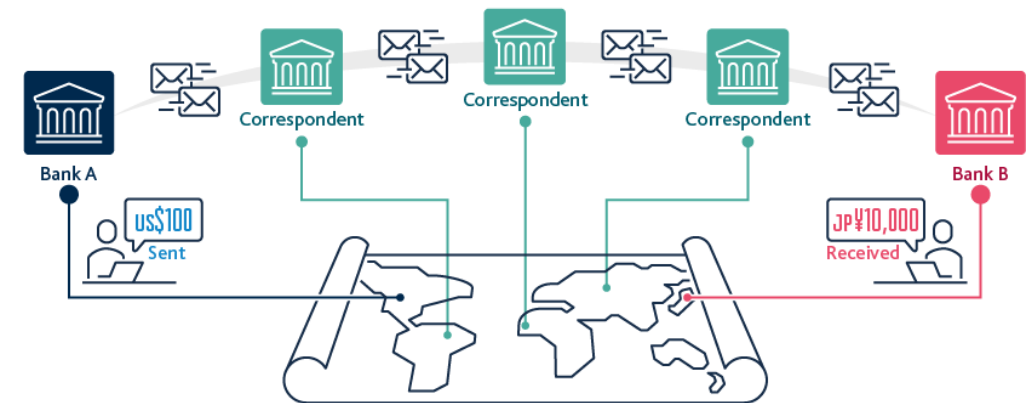
Support domestic and international transactions

Strong reliance on data flows (connecting consumers and for fraud detection)

Sector with most identified data localisation measures (16% of those identified) – 12 Cat. 3, 5 Cat 1

Data localisation:

- affects the ability of firms to operate international networks;
- increases costs for consumers, including smaller firms;
- raises vulnerabilities to fraud and cybersecurity risks; and
- reduces resilience.





# Case study 2: cloud computing

Allows users to rent computing power, storage and database management on a pay-as-you-go basis.

Helps companies scale up (or down) activities without needing to undertake capital investment

Model is built on cross-border data flows (network of remote and interconnected servers)

Data localisation measures proliferating fast (7 measures identified, most Category 3)

Data localisation:

- leads to higher costs and reduced service offerings, affecting downstream users, especially SMEs.

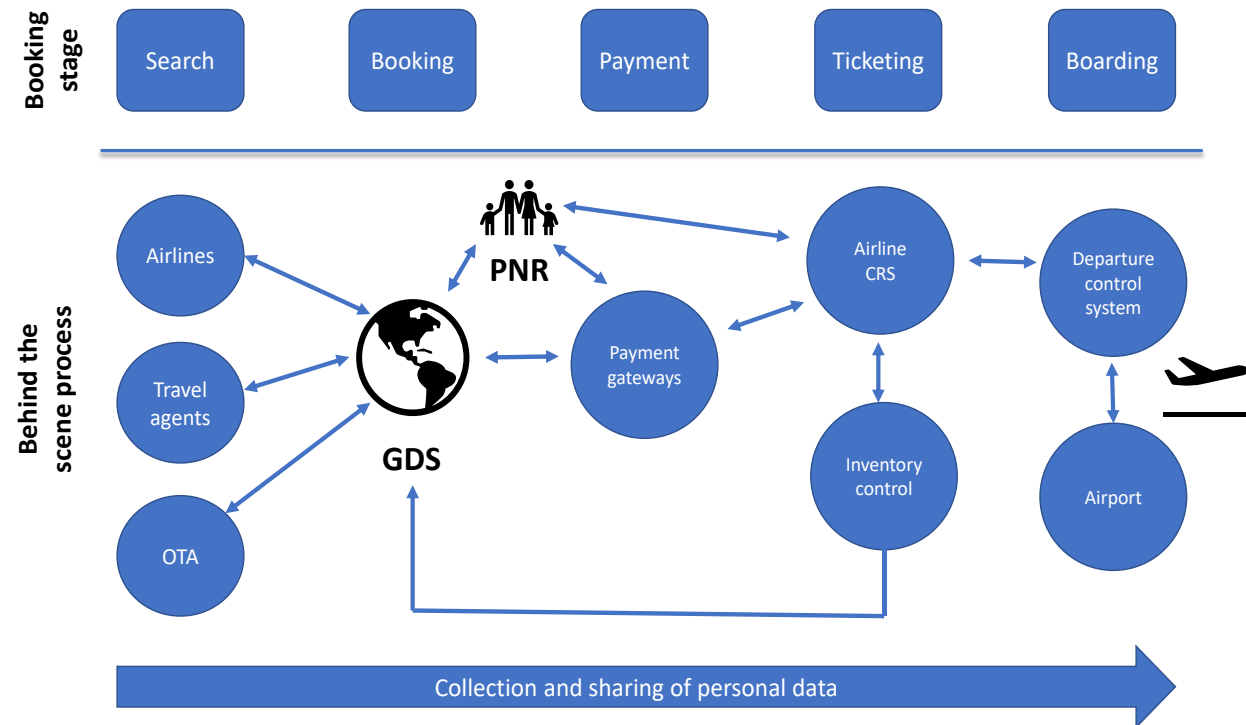
- greater cybersecurity risks by reducing the ability to share 'threat data' – metadata used to identify specific types of threats or system vulnerability





# Case Study 3: Air travel

- Aviation is data intensive
- Sector regulated through bilateral agreements and supported by international bodies (ICAO and IATA)
- Well established mechanisms for data transfers
- BUT increasing affects by cross-cutting data localisation requirements
- Industry concerned about uncertainty and regulatory fragmentation





## Potential action

- **Continued monitoring of evolving regulatory environment** to stay on top of emerging trends and wider engagement in transparency exercises.
- **Foster discussions around moving, in principle, towards less restrictive forms of data localisation measures where possible.** For example, use of access conditions (cat 0) rather than local storage requirements (cat 1) for non-personal data.
- **Continued cooperation on these issues,** in dialogue with regulators, trade policy makers and other relevant stakeholders, including from the private sector.
- **Continued effort to realise global rules that address data localisation and take into account legitimate public policy objectives while avoiding excessive fragmentation,** especially through discussion at the WTO under the Joint Statement Initiative on e-commerce.



# Contact us



Access all of the OECD's research and analysis on trade at:

[www.oecd.org/trade](http://www.oecd.org/trade)



You can reach us via e-mail by sending your message to:

[tad.contact@oecd.org](mailto:tad.contact@oecd.org)



We invite you to connect with us on Twitter by following:

[@OECDtrade](https://twitter.com/OECDtrade)