

115TH CONGRESS  
2D SESSION

# S. 2383

To amend title 18, United States Code, to improve law enforcement access to data stored across borders, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2018

Mr. HATCH (for himself, Mr. COONS, Mr. GRAHAM, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to improve law enforcement access to data stored across borders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clarifying Lawful  
5 Overseas Use of Data Act” or the “CLOUD Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds the following:

8 (1) Timely access to electronic data held by  
9 communications-service providers is an essential

1 component of government efforts to protect public  
2 safety and combat serious crime, including ter-  
3 rorism.

4 (2) Such efforts by the United States Govern-  
5 ment are being impeded by the inability to access  
6 data stored outside the United States that is in the  
7 custody, control, or possession of communications-  
8 service providers that are subject to jurisdiction of  
9 the United States.

10 (3) Foreign governments also increasingly seek  
11 access to electronic data held by communications-  
12 service providers in the United States for the pur-  
13 pose of combating serious crime.

14 (4) Communications-service providers face po-  
15 tential conflicting legal obligations when a foreign  
16 government orders production of electronic data that  
17 United States law may prohibit providers from dis-  
18 closing.

19 (5) Foreign law may create similarly conflicting  
20 legal obligations when chapter 121 of title 18,  
21 United States Code (commonly known as the  
22 “Stored Communications Act”), requires disclosure  
23 of electronic data that foreign law prohibits commu-  
24 nications-service providers from disclosing.

1           (6) International agreements provide a mecha-  
2           nism for resolving these potential conflicting legal  
3           obligations where the United States and the relevant  
4           foreign government share a common commitment to  
5           the rule of law and the protection of privacy and  
6           civil liberties.

7   **SEC. 3. PRESERVATION OF RECORDS; COMITY ANALYSIS OF**  
8                           **LEGAL PROCESS.**

9           (a) **REQUIRED PRESERVATION AND DISCLOSURE OF**  
10          **COMMUNICATIONS AND RECORDS.—**

11                  (1) **AMENDMENT.**—Chapter 121 of title 18,  
12          United States Code, is amended by adding at the  
13          end the following:

14   **“§ 2713. Required preservation and disclosure of com-**  
15                           **munications and records**

16          “A provider of electronic communication service or  
17          remote computing service shall comply with the obligations  
18          of this chapter to preserve, backup, or disclose the con-  
19          tents of a wire or electronic communication and any record  
20          or other information pertaining to a customer or sub-  
21          scriber within such provider’s possession, custody, or con-  
22          trol, regardless of whether such communication, record, or  
23          other information is located within or outside of the  
24          United States.”.

1           (2) TABLE OF SECTIONS.—The table of sections  
 2           for chapter 121 of title 18, United States Code, is  
 3           amended by inserting after the item relating to sec-  
 4           tion 2712 the following:

“2713. Required preservation and disclosure of communications and records.”.

5           (b) COMITY ANALYSIS OF LEGAL PROCESS SEEKING  
 6           CONTENTS OF WIRE OR ELECTRONIC COMMUNICA-  
 7           TION.—Section 2703 of title 18, United States Code, is  
 8           amended by adding at the end the following:

9           “(h) COMITY ANALYSIS AND DISCLOSURE OF INFOR-  
 10          MATION REGARDING LEGAL PROCESS SEEKING CON-  
 11          TENTS OF WIRE OR ELECTRONIC COMMUNICATION.—

12           “(1) DEFINITIONS.—In this subsection—

13           “(A) the term ‘qualifying foreign govern-  
 14          ment’ means a foreign government—

15           “(i) with which the United States has  
 16          an executive agreement that has entered  
 17          into force under section 2523; and

18           “(ii) the laws of which provide to elec-  
 19          tronic communication service providers and  
 20          remote computing service providers sub-  
 21          stantive and procedural opportunities simi-  
 22          lar to those provided under paragraphs (2)  
 23          and (5); and

24           “(B) the term ‘United States person’ has  
 25          the meaning given the term in section 2523.

1           “(2) MOTIONS TO QUASH OR MODIFY.—(A) A  
2 provider of electronic communication service to the  
3 public or remote computing service, that is being re-  
4 quired to disclose pursuant to legal process issued  
5 under this section the contents of a wire or elec-  
6 tronic communication of a subscriber or customer,  
7 may file a motion to modify or quash the legal proc-  
8 ess where the provider reasonably believes—

9           “(i) that the customer or subscriber is not  
10 a United States person and does not reside in  
11 the United States; and

12           “(ii) that the required disclosure would  
13 create a material risk that the provider would  
14 violate the laws of a qualifying foreign govern-  
15 ment.

16 Such a motion shall be filed not later than 14 days  
17 after the date on which the provider was served with  
18 the legal process, absent agreement with the govern-  
19 ment or permission from the court to extend the  
20 deadline based on an application made within the 14  
21 days. The right to move to quash is without preju-  
22 dice to any other grounds to move to quash or de-  
23 fenses thereto, but it shall be the sole basis for mov-  
24 ing to quash on the grounds of a conflict of law re-  
25 lated to a qualifying foreign government.

1           “(B) Upon receipt of a motion filed pursuant to  
2           subparagraph (A), the court shall afford the govern-  
3           mental entity that applied for or issued the legal  
4           process under this section the opportunity to re-  
5           spond. The court may modify or quash the legal  
6           process, as appropriate, only if the court finds  
7           that—

8                   “(i) the required disclosure would cause  
9                   the provider to violate the laws of a qualifying  
10                  foreign government;

11                  “(ii) based on the totality of the cir-  
12                  cumstances, the interests of justice dictate that  
13                  the legal process should be modified or quashed;  
14                  and

15                  “(iii) the customer or subscriber is not a  
16                  United States person and does not reside in the  
17                  United States.

18           “(3) COMITY ANALYSIS.—For purposes of mak-  
19           ing a determination under paragraph (2)(B)(ii), the  
20           court shall take into account, as appropriate—

21                   “(A) the interests of the United States, in-  
22                   cluding the investigative interests of the govern-  
23                   mental entity seeking to require the disclosure;

1           “(B) the interests of the qualifying foreign  
2 government in preventing any prohibited disclo-  
3 sure;

4           “(C) the likelihood, extent, and nature of  
5 penalties to the provider or any employees of  
6 the provider as a result of inconsistent legal re-  
7 quirements imposed on the provider;

8           “(D) the location and nationality of the  
9 subscriber or customer whose communications  
10 are being sought, if known, and the nature and  
11 extent of the subscriber or customer’s connec-  
12 tion to the United States, or if the legal process  
13 has been sought on behalf of a foreign authority  
14 pursuant to section 3512, the nature and extent  
15 of the subscriber or customer’s connection to  
16 the foreign authority’s country;

17           “(E) the nature and extent of the pro-  
18 vider’s ties to and presence in the United  
19 States;

20           “(F) the importance to the investigation of  
21 the information required to be disclosed;

22           “(G) the likelihood of timely and effective  
23 access to the information required to be dis-  
24 closed through means that would cause less se-  
25 rious negative consequences; and

1           “(H) if the legal process has been sought  
2           on behalf of a foreign authority pursuant to  
3           section 3512, the investigative interests of the  
4           foreign authority making the request for assist-  
5           ance.

6           “(4) DISCLOSURE OBLIGATIONS DURING PEND-  
7           ENCY OF CHALLENGE.—A service provider shall pre-  
8           serve, but not be obligated to produce, information  
9           sought during the pendency of a motion brought  
10          under this subsection, unless the court finds that im-  
11          mediate production is necessary to prevent an ad-  
12          verse result identified in section 2705(a)(2).

13          “(5) DISCLOSURE TO QUALIFYING FOREIGN  
14          GOVERNMENT.—(A) It shall not constitute a viola-  
15          tion of a protective order issued under section 2705  
16          for a provider of electronic communication service to  
17          the public or remote computing service to disclose to  
18          the entity within a qualifying foreign government,  
19          designated in an executive agreement under section  
20          2523, the fact of the existence of legal process  
21          issued under this section seeking the contents of a  
22          wire or electronic communication of a customer or  
23          subscriber who is a national or resident of the quali-  
24          fying foreign government.





1 terminated and certified to Congress satisfies section  
2 2523.”; and

3 (B) in section 2520(d), by amending para-  
4 graph (3) to read as follows:

5 “(3) a good faith determination that section  
6 2511(3), 2511(2)(i), or 2511(2)(j) of this title per-  
7 mitted the conduct complained of;”;

8 (2) in chapter 121—

9 (A) in section 2702—

10 (i) in subsection (b)—

11 (I) in paragraph (8), by striking  
12 the period at the end and inserting “;  
13 or”; and

14 (II) by adding at the end the fol-  
15 lowing:

16 “(9) to a foreign government pursuant to an  
17 order from a foreign government that is subject to  
18 an executive agreement that the Attorney General  
19 has determined and certified to Congress satisfies  
20 section 2523.”; and

21 (ii) in subsection (c)—

22 (I) in paragraph (5), by striking  
23 “or” at the end;

1 (II) in paragraph (6), by striking  
2 the period at the end and inserting “;  
3 or”; and

4 (III) by adding at the end the  
5 following:

6 “(7) to a foreign government pursuant to an  
7 order from a foreign government that is subject to  
8 an executive agreement that the Attorney General  
9 has determined and certified to Congress satisfies  
10 section 2523.”; and

11 (B) in section 2707(e), by amending para-  
12 graph (3) to read as follows:

13 “(3) a good faith determination that section  
14 2511(3), section 2702(b)(9), or section 2702(e)(7)  
15 of this title permitted the conduct complained of;”;  
16 and

17 (3) in chapter 206—

18 (A) in section 3121(a), by inserting before  
19 the period at the end the following: “or an  
20 order from a foreign government that is subject  
21 to an executive agreement that the Attorney  
22 General has determined and certified to Con-  
23 gress satisfies section 2523”; and

24 (B) in section 3124—

1 (i) by amending subsection (d) to read  
2 as follows:

3 “(d) NO CAUSE OF ACTION AGAINST A PROVIDER  
4 DISCLOSING INFORMATION UNDER THIS CHAPTER.—No  
5 cause of action shall lie in any court against any provider  
6 of a wire or electronic communication service, its officers,  
7 employees, agents, or other specified persons for providing  
8 information, facilities, or assistance in accordance with a  
9 court order under this chapter, request pursuant to section  
10 3125 of this title, or an order from a foreign government  
11 that is subject to an executive agreement that the Attor-  
12 ney General has determined and certified to Congress sat-  
13 isfies section 2523.”; and

14 (ii) by amending subsection (e) to  
15 read as follows:

16 “(e) DEFENSE.—A good faith reliance on a court  
17 order under this chapter, a request pursuant to section  
18 3125 of this title, a legislative authorization, a statutory  
19 authorization, or a good faith determination that the con-  
20 duct complained of was permitted by an order from a for-  
21 eign government that is subject to executive agreement  
22 that the Attorney General has determined and certified  
23 to Congress satisfies section 2523, is a complete defense  
24 against any civil or criminal action brought under this  
25 chapter or any other law.”.

1 **SEC. 5. EXECUTIVE AGREEMENTS ON ACCESS TO DATA BY**  
2 **FOREIGN GOVERNMENTS.**

3 (a) IN GENERAL.—Chapter 119 of title 18, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 2523. Executive agreements on access to data by**  
7 **foreign governments**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘lawfully admitted for permanent  
10 residence’ has the meaning given the term in section  
11 101(a) of the Immigration and Nationality Act (8  
12 U.S.C. 1101(a)); and

13 “(2) the term ‘United States person’ means a  
14 citizen or national of the United States, an alien  
15 lawfully admitted for permanent residence, an unin-  
16 corporated association a substantial number of mem-  
17 bers of which are citizens of the United States or  
18 aliens lawfully admitted for permanent residence, or  
19 a corporation that is incorporated in the United  
20 States.

21 “(b) EXECUTIVE AGREEMENT REQUIREMENTS.—  
22 For purposes of this chapter, chapter 121, and chapter  
23 206, an executive agreement governing access by a foreign  
24 government to data subject to this chapter, chapter 121,  
25 or chapter 206 shall be considered to satisfy the require-  
26 ments of this section if the Attorney General, with the con-

1 currence of the Secretary of State, determines, and sub-  
2 mits a written certification of such determination to Con-  
3 gress, that—

4           “(1) the domestic law of the foreign govern-  
5           ment, including the implementation of that law, af-  
6           fords robust substantive and procedural protections  
7           for privacy and civil liberties in light of the data col-  
8           lection and activities of the foreign government that  
9           will be subject to the agreement, if—

10                   “(A) such a determination under this sec-  
11                   tion takes into account, as appropriate, credible  
12                   information and expert input; and

13                   “(B) the factors to be considered in mak-  
14                   ing such a determination include whether the  
15                   foreign government—

16                           “(i) has adequate substantive and pro-  
17                           cedural laws on cybercrime and electronic  
18                           evidence, as demonstrated by being a party  
19                           to the Convention on Cybercrime, done at  
20                           Budapest November 23, 2001, and entered  
21                           into force January 7, 2004, or through do-  
22                           mestic laws that are consistent with defini-  
23                           tions and the requirements set forth in  
24                           chapters I and II of that Convention;

1           “(ii) demonstrates respect for the rule  
2 of law and principles of nondiscrimination;

3           “(iii) adheres to applicable inter-  
4 national human rights obligations and  
5 commitments or demonstrates respect for  
6 international universal human rights, in-  
7 cluding—

8                   “(I) protection from arbitrary  
9 and unlawful interference with pri-  
10 vacy;

11                   “(II) fair trial rights;

12                   “(III) freedom of expression, as-  
13 sociation, and peaceful assembly;

14                   “(IV) prohibitions on arbitrary  
15 arrest and detention; and

16                   “(V) prohibitions against torture  
17 and cruel, inhuman, or degrading  
18 treatment or punishment;

19           “(iv) has clear legal mandates and  
20 procedures governing those entities of the  
21 foreign government that are authorized to  
22 seek data under the executive agreement,  
23 including procedures through which those  
24 authorities collect, retain, use, and share

1 data, and effective oversight of these ac-  
2 tivities;

3 “(v) has sufficient mechanisms to pro-  
4 vide accountability and appropriate trans-  
5 parency regarding the collection and use of  
6 electronic data by the foreign government;  
7 and

8 “(vi) demonstrates a commitment to  
9 promote and protect the global free flow of  
10 information and the open, distributed, and  
11 interconnected nature of the Internet;

12 “(2) the foreign government has adopted appro-  
13 priate procedures to minimize the acquisition, reten-  
14 tion, and dissemination of information concerning  
15 United States persons subject to the agreement; and

16 “(3) the agreement requires that, with respect  
17 to any order that is subject to the agreement—

18 “(A) the foreign government may not in-  
19 tentiously target a United States person or a  
20 person located in the United States, and shall  
21 adopt targeting procedures designed to meet  
22 this requirement;

23 “(B) the foreign government may not tar-  
24 get a non-United States person located outside  
25 the United States if the purpose is to obtain in-



1 formation concerning a United States person or  
2 a person located in the United States;

3 “(C) the foreign government may not issue  
4 an order at the request of or to obtain informa-  
5 tion to provide to the United States Govern-  
6 ment or a third-party government, nor shall the  
7 foreign government be required to share any in-  
8 formation produced with the United States  
9 Government or a third-party government;

10 “(D) an order issued by the foreign gov-  
11 ernment—

12 “(i) shall be for the purpose of obtain-  
13 ing information relating to the prevention,  
14 detection, investigation, or prosecution of  
15 serious crime, including terrorism;

16 “(ii) shall identify a specific person,  
17 account, address, or personal device, or  
18 any other specific identifier as the object of  
19 the order;

20 “(iii) shall be in compliance with the  
21 domestic law of that country, and any obli-  
22 gation for a provider of an electronic com-  
23 munications service or a remote computing  
24 service to produce data shall derive solely  
25 from that law;

1           “(iv) shall be based on requirements  
2           for a reasonable justification based on  
3           articulable and credible facts, particularity,  
4           legality, and severity regarding the conduct  
5           under investigation;

6           “(v) shall be subject to review or over-  
7           sight by a court, judge, magistrate, or  
8           other independent authority; and

9           “(vi) in the case of an order for the  
10          interception of wire or electronic commu-  
11          nications, and any extensions thereof, shall  
12          require that the interception order—

13                 “(I) be for a fixed, limited dura-  
14                 tion;

15                 “(II) may not last longer than is  
16                 reasonably necessary to accomplish  
17                 the approved purposes of the order;  
18                 and

19                 “(III) be issued only if the same  
20                 information could not reasonably be  
21                 obtained by another less intrusive  
22                 method;

23                 “(E) an order issued by the foreign gov-  
24                 ernment may not be used to infringe freedom of  
25                 speech;

1           “(F) the foreign government shall prompt-  
2 ly review material collected pursuant to the  
3 agreement and store any unreviewed commu-  
4 nications on a secure system accessible only to  
5 those persons trained in applicable procedures;

6           “(G) the foreign government shall, using  
7 procedures that, to the maximum extent pos-  
8 sible, meet the definition of minimization proce-  
9 dures in section 101 of the Foreign Intelligence  
10 Surveillance Act of 1978 (50 U.S.C. 1801), seg-  
11 regate, seal, or delete, and not disseminate ma-  
12 terial found not to be information that is, or is  
13 necessary to understand or assess the impor-  
14 tance of information that is, relevant to the pre-  
15 vention, detection, investigation, or prosecution  
16 of serious crime, including terrorism, or nec-  
17 essary to protect against a threat of death or  
18 serious bodily harm to any person;

19           “(H) the foreign government may not dis-  
20 seminate the content of a communication of a  
21 United States person to United States authori-  
22 ties unless the communication may be dissemi-  
23 nated pursuant to subparagraph (G) and re-  
24 lates to significant harm, or the threat thereof,  
25 to the United States or United States persons,

1 including crimes involving national security  
2 such as terrorism, significant violent crime,  
3 child exploitation, transnational organized  
4 crime, or significant financial fraud;

5 “(I) the foreign government shall afford  
6 reciprocal rights of data access, to include,  
7 where applicable, removing restrictions on com-  
8 munications service providers, including pro-  
9 viders subject to United States jurisdiction, and  
10 thereby allow them to respond to valid legal  
11 process sought by a governmental entity (as de-  
12 fined in section 2711) if foreign law would oth-  
13 erwise prohibit communications-service pro-  
14 viders from disclosing the data;

15 “(J) the foreign government shall agree to  
16 periodic review of compliance by the foreign  
17 government with the terms of the agreement to  
18 be conducted by the United States Government;  
19 and

20 “(K) the United States Government shall  
21 reserve the right to render the agreement inap-  
22 plicable as to any order for which the United  
23 States Government concludes the agreement  
24 may not properly be invoked.

1       “(c) LIMITATION ON JUDICIAL REVIEW.—A deter-  
2 mination or certification made by the Attorney General  
3 under subsection (b) shall not be subject to judicial or ad-  
4 ministrative review.

5       “(d) EFFECTIVE DATE OF CERTIFICATION.—

6               “(1) NOTICE.—Not later than 7 days after the  
7 date on which the Attorney General certifies an ex-  
8 ecutive agreement under subsection (b), the Attorney  
9 General shall provide notice of the determination  
10 under subsection (b) and a copy of the executive  
11 agreement to Congress, including—

12                       “(A) the Committee on the Judiciary and  
13 the Committee on Foreign Relations of the Sen-  
14 ate; and

15                       “(B) the Committee on the Judiciary and  
16 the Committee on Foreign Affairs of the House  
17 of Representatives.

18               “(2) ENTRY INTO FORCE.—An executive agree-  
19 ment that is determined and certified by the Attor-  
20 ney General to satisfy the requirements of this sec-  
21 tion shall enter into force not earlier than the date  
22 that is 90 days after the date on which notice is pro-  
23 vided under paragraph (1), unless Congress enacts  
24 a joint resolution of disapproval in accordance with  
25 paragraph (4).

1 “(3) CONSIDERATION BY COMMITTEES.—

2 “(A) IN GENERAL.—During the 60-day pe-  
3 riod beginning on the date on which notice is  
4 provided under paragraph (1), each congres-  
5 sional committee described in paragraph (1)  
6 may—

7 “(i) hold one or more hearings on the  
8 executive agreement; and

9 “(ii) submit to their respective House  
10 of Congress a report recommending wheth-  
11 er the executive agreement should be ap-  
12 proved or disapproved.

13 “(B) REQUESTS FOR INFORMATION.—  
14 Upon request by the Chairman or Ranking  
15 Member of a congressional committee described  
16 in paragraph (1), the head of an agency shall  
17 promptly furnish a summary of factors consid-  
18 ered in determining that the foreign govern-  
19 ment satisfies the requirements of this section.

20 “(4) CONGRESSIONAL REVIEW.—

21 “(A) JOINT RESOLUTION DEFINED.—In  
22 this paragraph, the term ‘joint resolution’  
23 means only a joint resolution—

24 “(i) introduced during the 90-day pe-  
25 riod described in paragraph (2);

1 “(ii) which does not have a preamble;

2 “(iii) the title of which is as follows:

3 ‘Joint resolution disapproving the executive  
4 agreement signed by the United States and  
5 \_\_\_\_.’, the blank space being appropriately  
6 filled in; and

7 “(iv) the matter after the resolving  
8 clause of which is as follows: ‘That Con-  
9 gress disapproves the executive agreement  
10 governing access by \_\_\_\_\_ to certain elec-  
11 tronic data as submitted by the Attorney  
12 General on \_\_\_\_\_’, the blank spaces being  
13 appropriately filled in.

14 “(B) JOINT RESOLUTION ENACTED.—Not-  
15 withstanding any other provision of this section,  
16 if not later than 90 days after the date on  
17 which notice is provided to Congress under  
18 paragraph (1), there is enacted into law a joint  
19 resolution disapproving of an executive agree-  
20 ment under this section, the executive agree-  
21 ment shall not enter into force.

22 “(C) INTRODUCTION.—During the 90-day  
23 period described in subparagraph (B), a joint  
24 resolution of disapproval may be introduced—

1                   “(i) in the House of Representatives,  
2                   by the majority leader or the minority  
3                   leader; and

4                   “(ii) in the Senate, by the majority  
5                   leader (or the majority leader’s designee)  
6                   or the minority leader (or the minority  
7                   leader’s designee).

8                   “(5) FLOOR CONSIDERATION IN HOUSE OF  
9                   REPRESENTATIVES.—If a committee of the House of  
10                  Representatives to which a joint resolution of dis-  
11                  approval has been referred has not reported the joint  
12                  resolution within 60 days after the date of referral,  
13                  that committee shall be discharged from further con-  
14                  sideration of the joint resolution.

15                  “(6) CONSIDERATION IN THE SENATE.—

16                  “(A) COMMITTEE REFERRAL.—A joint res-  
17                  olution of disapproval introduced in the Senate  
18                  shall be—

19                         “(i) referred to the Committee on the  
20                         Judiciary; and

21                         “(ii) referred to the Committee on  
22                         Foreign Relations.

23                  “(B) REPORTING AND DISCHARGE.—If a  
24                  committee to which a joint resolution of dis-  
25                  approval was referred has not reported the joint



1 resolution within 60 days after the date of re-  
2 ferral of the joint resolution, that committee  
3 shall be discharged from further consideration  
4 of the joint resolution and the joint resolution  
5 shall be placed on the appropriate calendar.

6 “(C) PROCEEDING TO CONSIDERATION.—  
7 Notwithstanding rule XXII of the Standing  
8 Rules of the Senate, it is in order at any time  
9 after either the Committee on the Judiciary or  
10 the Committee on Foreign Relations, as the  
11 case may be, reports a joint resolution of dis-  
12 approval to the Senate or has been discharged  
13 from consideration of such a joint resolution  
14 (even though a previous motion to the same ef-  
15 fect has been disagreed to) to move to proceed  
16 to the consideration of the joint resolution, and  
17 all points of order against the joint resolution  
18 (and against consideration of the joint resolu-  
19 tion) are waived. The motion is not subject to  
20 a motion to postpone. A motion to reconsider  
21 the vote by which the motion is agreed to or  
22 disagreed to shall not be in order.

23 “(D) RULINGS OF THE CHAIR ON PROCE-  
24 DURE.—Appeals from the decisions of the Chair  
25 relating to the application of the rules of the

1 Senate, as the case may be, to the procedure re-  
2 lating to a joint resolution of disapproval shall  
3 be decided without debate.

4 “(E) CONSIDERATION OF VETO MES-  
5 SAGES.—Debate in the Senate of any veto mes-  
6 sage with respect to a joint resolution of dis-  
7 approval, including all debatable motions and  
8 appeals in connection with the joint resolution,  
9 shall be limited to 10 hours, to be equally di-  
10 vided between, and controlled by, the majority  
11 leader and the minority leader or their des-  
12 ignees.

13 “(7) RULES RELATING TO SENATE AND HOUSE  
14 OF REPRESENTATIVES.—

15 “(A) TREATMENT OF SENATE JOINT RESO-  
16 LUTION IN HOUSE.—In the House of Rep-  
17 resentatives, the following procedures shall  
18 apply to a joint resolution of disapproval re-  
19 ceived from the Senate (unless the House has  
20 already passed a joint resolution relating to the  
21 same proposed action):

22 “(i) The joint resolution shall be re-  
23 ferred to the appropriate committees.

24 “(ii) If a committee to which a joint  
25 resolution has been referred has not re-

1           ported the joint resolution within 7 days  
2           after the date of referral, that committee  
3           shall be discharged from further consider-  
4           ation of the joint resolution.

5           “(iii) Beginning on the third legisla-  
6           tive day after each committee to which a  
7           joint resolution has been referred reports  
8           the joint resolution to the House or has  
9           been discharged from further consideration  
10          thereof, it shall be in order to move to pro-  
11          ceed to consider the joint resolution in the  
12          House. All points of order against the mo-  
13          tion are waived. Such a motion shall not be  
14          in order after the House has disposed of a  
15          motion to proceed on the joint resolution.  
16          The previous question shall be considered  
17          as ordered on the motion to its adoption  
18          without intervening motion. The motion  
19          shall not be debatable. A motion to recon-  
20          sider the vote by which the motion is dis-  
21          posed of shall not be in order.

22          “(iv) The joint resolution shall be con-  
23          sidered as read. All points of order against  
24          the joint resolution and against its consid-  
25          eration are waived. The previous question

1 shall be considered as ordered on the joint  
2 resolution to final passage without inter-  
3 vening motion except 2 hours of debate  
4 equally divided and controlled by the spon-  
5 sor of the joint resolution (or a designee)  
6 and an opponent. A motion to reconsider  
7 the vote on passage of the joint resolution  
8 shall not be in order.

9 “(B) TREATMENT OF HOUSE JOINT RESO-  
10 LUTION IN SENATE.—

11 “(i) If, before the passage by the Sen-  
12 ate of a joint resolution of disapproval, the  
13 Senate receives an identical joint resolution  
14 from the House of Representatives, the fol-  
15 lowing procedures shall apply:

16 “(I) That joint resolution shall  
17 not be referred to a committee.

18 “(II) With respect to that joint  
19 resolution—

20 “(aa) the procedure in the  
21 Senate shall be the same as if no  
22 joint resolution had been received  
23 from the House of Representa-  
24 tives; but

1                   “(bb) the vote on passage  
2                   shall be on the joint resolution  
3                   from the House of Representa-  
4                   tives.

5                   “(ii) If, following passage of a joint  
6                   resolution of disapproval in the Senate, the  
7                   Senate receives an identical joint resolution  
8                   from the House of Representatives, that  
9                   joint resolution shall be placed on the ap-  
10                  propriate Senate calendar.

11                  “(iii) If a joint resolution of dis-  
12                  approval is received from the House, and  
13                  no companion joint resolution has been in-  
14                  troduced in the Senate, the Senate proce-  
15                  dures under this subsection shall apply to  
16                  the House joint resolution.

17                  “(C) APPLICATION TO REVENUE MEAS-  
18                  URES.—The provisions of this paragraph shall  
19                  not apply in the House of Representatives to a  
20                  joint resolution of disapproval that is a revenue  
21                  measure.

22                  “(8) RULES OF HOUSE OF REPRESENTATIVES  
23                  AND SENATE.—This subsection is enacted by Con-  
24                  gress—

1           “(A) as an exercise of the rulemaking  
2           power of the Senate and the House of Rep-  
3           resentatives, respectively, and as such is deemed  
4           a part of the rules of each House, respectively,  
5           and supersedes other rules only to the extent  
6           that it is inconsistent with such rules; and

7           “(B) with full recognition of the constitu-  
8           tional right of either House to change the rules  
9           (so far as relating to the procedure of that  
10          House) at any time, in the same manner, and  
11          to the same extent as in the case of any other  
12          rule of that House.

13          “(e) RENEWAL OF DETERMINATION.—

14           “(1) IN GENERAL.—The Attorney General, with  
15           the concurrence of the Secretary of State, shall  
16           renew a determination under subsection (b) every 5  
17           years.

18           “(2) REPORT.—Upon renewing a determination  
19           under subsection (b), the Attorney General shall file  
20           a report with the Committee on the Judiciary and  
21           the Committee on Foreign Relations of the Senate  
22           and the Committee on the Judiciary and the Com-  
23           mittee on Foreign Affairs of the House of Rep-  
24           resentatives describing—

25           “(A) the reasons for the renewal;

1           “(B) any substantive changes to the agree-  
2           ment or to the relevant laws or procedures of  
3           the foreign government since the original deter-  
4           mination or, in the case of a second or subse-  
5           quent renewal, since the last renewal; and

6           “(C) how the agreement has been imple-  
7           mented and what problems or controversies, if  
8           any, have arisen as a result of the agreement  
9           or its implementation.

10          “(3) NONRENEWAL.—If a determination is not  
11          renewed under paragraph (1), the agreement shall  
12          no longer be considered to satisfy the requirements  
13          of this section.

14          “(f) PUBLICATION.—Any determination or certifi-  
15          cation under subsection (b) regarding an executive agree-  
16          ment under this section, including any termination or re-  
17          newal of such an agreement, shall be published in the Fed-  
18          eral Register as soon as is reasonably practicable.

19          “(g) MINIMIZATION PROCEDURES.—A United States  
20          authority that receives the content of a communication de-  
21          scribed in subsection (b)(3)(H) from a foreign government  
22          in accordance with an executive agreement under this sec-  
23          tion shall use procedures that, to the maximum extent pos-  
24          sible, meet the definition of minimization procedures in  
25          section 101 of the Foreign Intelligence Surveillance Act

1 of 1978 (50 U.S.C. 1801) to appropriately protect non-  
2 publicly available information concerning United States  
3 persons.”.

4 (b) TABLE OF SECTIONS AMENDMENT.—The table of  
5 sections for chapter 119 of title 18, United States Code,  
6 is amended by inserting after the item relating to section  
7 2522 the following:

“2523. Executive agreements on access to data by foreign governments.”.

8 **SEC. 6. RULE OF CONSTRUCTION.**

9 Nothing in this Act, or the amendments made by this  
10 Act, shall be construed to preclude any foreign authority  
11 from obtaining assistance in a criminal investigation or  
12 prosecution pursuant to section 3512 of title 18, United  
13 States Code, section 1782 of title 28, United States Code,  
14 or as otherwise provided by law.

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