

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.

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

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 “(B) Nothing in this paragraph shall be con-
 2 strued to modify or otherwise affect any other au-
 3 thority to make a motion to modify or quash a pro-
 4 tective order issued under section 2705.”.

5 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
 6 tion, or an amendment made by this section, shall be con-
 7 strued to modify or otherwise affect the common law
 8 standards governing the availability or application of com-
 9 pulsory process to other types of compulsory process or to in-
 10 stances of compulsory process issued under section 2703
 11 of title 18, United States Code, as amended by this sec-
 12 tion, and not covered under subsection (h)(2) of such sec-
 13 tion 2703.

14 **SEC. 4. ADDITIONAL AMENDMENTS TO CURRENT COMMU-**
 15 **NICATIONS LAWS.**

16 Title 18, United States Code, is amended—

17 (1) in chapter 119—

18 (A) in section 2511(2), by adding at the
 19 end the following:

20 “(j) It shall not be unlawful under this chapter for
 21 a provider of electronic communication service to the pub-
 22 lic or remote computing service to intercept or disclose the
 23 contents of a wire or electronic communication in response
 24 to an order from a foreign government that is subject to
 25 an executive agreement that the Attorney General has de-

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 promptly
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 congress-
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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