

115TH CONGRESS
2D SESSION

S. _____

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

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 _____

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 the content of data stored outside the United States
7 that is in the custody, control, or possession of com-
8 munications-service providers that are subject to ju-
9 risdiction of 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 of
23 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

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

15 Such a motion shall be filed not later than 14
16 days after the date on which the provider was
17 served with the legal process, absent agreement
18 with the government or permission from the
19 court to extend the deadline based on an appli-
20 cation made within the 14 days. The right to
21 move to quash is without prejudice to any other
22 grounds to move to quash or defenses thereto,
23 but it shall be the sole basis for moving to
24 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 was not a
16 United States person.

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

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

23 “(B) the interests of the qualifying foreign
24 government in preventing any prohibited disclo-
25 sure;

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

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

14 “(E) the nature and extent of the pro-
15 vider’s ties to and presence in the United
16 States;

17 “(F) the importance of the information to
18 the investigation required to be disclosed;

19 “(G) the likelihood of timely and effective
20 access to the information through means that
21 cause less serious negative consequences; and

22 “(H) if the legal process has been sought
23 on behalf of a foreign authority pursuant to
24 section 3512, the investigative interests of the

1 foreign authority making the request for assist-
2 ance.

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

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

22 “(B) Nothing in this paragraph shall be con-
23 strued to modify or otherwise affect any other au-
24 thority to make a motion to modify a protective
25 order under section 2705.”.

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion, or an amendment made by this section, shall be con-
3 strued to modify or otherwise affect the common law
4 standards governing the availability or application of com-
5 ity analysis to other types of compulsory process.

6 **SEC. 4. ADDITIONAL AMENDMENTS TO CURRENT COMMU-
7 NICATIONS LAWS.**

8 Title 18, United States Code, is amended—

9 (1) in chapter 119—

10 (A) in section 2511(2), by adding at the
11 end the following:

12 “(j) It shall not be unlawful under this chapter for
13 a provider of electronic communication service to the pub-
14 lic or remote computing service to intercept or disclose the
15 contents of a wire or electronic communication in response
16 to an order from a foreign government that is subject to
17 an executive agreement that the Attorney General has de-
18 termined and certified to Congress satisfies section
19 2523.”; and

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

22 “(3) a good faith determination that section
23 2511(3), 2511(2)(i), or 2511(2)(j) of this title per-
24 mitted the conduct complained of;”;

25 (2) in chapter 121—

1 (A) in section 2702—

2 (i) in subsection (b)—

3 (I) in paragraph (8), by striking
4 the period at the end and inserting “;
5 or”; and

6 (II) by adding at the end the fol-
7 lowing:

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

13 (ii) in subsection (c)—

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

16 (II) in paragraph (6), by striking
17 the period at the end and inserting “;
18 or”; and

19 (III) by adding at the end the
20 following:

21 “(7) a foreign government pursuant to an order
22 from a foreign government that is subject to an ex-
23 ecutive agreement that the Attorney General has de-
24 termined and certified to Congress satisfies section
25 2523.”; and

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

3 “(3) a good faith determination that section
4 2511(3), section 2702(b)(9), or section 2702(e)(7)
5 of this title permitted the conduct complained of;”;
6 and

7 (3) in chapter 206—

8 (A) in section 3121(a), by inserting before
9 the period at the end the following: “or an
10 order from a foreign government that is subject
11 to an executive agreement that the Attorney
12 General has determined and certified to Con-
13 gress satisfies section 2523”; and

14 (B) in section 3124—

15 (i) by amending subsection (d) to read
16 as follows:

17 “(d) NO CAUSE OF ACTION AGAINST A PROVIDER
18 DISCLOSING INFORMATION UNDER THIS CHAPTER.—No
19 cause of action shall lie in any court against any provider
20 of a wire or electronic communication service, its officers,
21 employees, agents, or other specified persons for providing
22 information, facilities, or assistance in accordance with a
23 court order under this chapter, request pursuant to section
24 3125 of this title, or an order from a foreign government
25 that is subject to an executive agreement that the Attor-

1 ney General has determined and certified to Congress sat-
2 isfies section 2523.”; and

3 (ii) by amending subsection (e) to
4 read as follows:

5 “(e) DEFENSE.—A good faith reliance on a court
6 order under this chapter, a request pursuant to section
7 3125 of this title, a legislative authorization, a statutory
8 authorization, or a good faith determination that the con-
9 duct complained of was permitted by an order from a for-
10 eign government that is subject to executive agreement
11 that the Attorney General has determined and certified
12 to Congress satisfies section 2523, is a complete defense
13 against any civil or criminal action brought under this
14 chapter or any other law.”.

15 **SEC. 5. EXECUTIVE AGREEMENTS ON ACCESS TO DATA BY**
16 **FOREIGN GOVERNMENTS.**

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

20 **“§ 2523. Executive agreements on access to data by**
21 **foreign governments**

22 “(a) DEFINITIONS.—In this section—

23 “(1) the term ‘lawfully admitted for permanent
24 residence’ has the meaning given the term in section

1 101(a) of the Immigration and Nationality Act (8
2 U.S.C. 1101(a)); and

3 “(2) the term ‘United States person’ means a
4 citizen or national of the United States, an alien
5 lawfully admitted for permanent residence, an unin-
6 corporated association a substantial number of mem-
7 bers of which are citizens of the United States or
8 aliens lawfully admitted for permanent residence, or
9 a corporation that is incorporated in the United
10 States.

11 “(b) EXECUTIVE AGREEMENT REQUIREMENTS.—
12 For purposes of this chapter, chapter 121, and chapter
13 206, an executive agreement governing access by a foreign
14 government to data subject to this chapter, chapter 121,
15 or chapter 206 shall be considered to satisfy the require-
16 ments of this section if the Attorney General, with the con-
17 currence of the Secretary of State, determines, and sub-
18 mits a written certification of such determination to Con-
19 gress, that—

20 “(1) the domestic law of the foreign govern-
21 ment, including the implementation of that law, af-
22 fords robust substantive and procedural protections
23 for privacy and civil liberties in light of the data col-
24 lection and activities of the foreign government that
25 will be subject to the agreement, if—

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

4 “(B) the factors to be considered in mak-
5 ing such a determination include whether the
6 foreign government—

7 “(i) has adequate substantive and pro-
8 cedural laws on cybercrime and electronic
9 evidence, as demonstrated by being a party
10 to the Convention on Cybercrime, done at
11 Budapest November 23, 2001, and entered
12 into force January 7, 2004, or through do-
13 mestic laws that are consistent with defini-
14 tions and the requirements set forth in
15 chapters I and II of that Convention;

16 “(ii) demonstrates respect for the rule
17 of law and principles of nondiscrimination;

18 “(iii) adheres to applicable inter-
19 national human rights obligations and
20 commitments or demonstrates respect for
21 international universal human rights, in-
22 cluding—

23 “(I) protection from arbitrary
24 and unlawful interference with pri-
25 vacy;

1 “(II) fair trial rights;

2 “(III) freedom of expression, as-
3 sociation, and peaceful assembly;

4 “(IV) prohibitions on arbitrary
5 arrest and detention; and

6 “(V) prohibitions against torture
7 and cruel, inhuman, or degrading
8 treatment or punishment;

9 “(iv) has clear legal mandates and
10 procedures governing those entities of the
11 foreign government that are authorized to
12 seek data under the executive agreement,
13 including procedures through which those
14 authorities collect, retain, use, and share
15 data, and effective oversight of these ac-
16 tivities;

17 “(v) has sufficient mechanisms to pro-
18 vide accountability and appropriate trans-
19 parency regarding the collection and use of
20 electronic data by the foreign government;
21 and

22 “(vi) demonstrates a commitment to
23 promote and protect the global free flow of
24 information and the open, distributed, and
25 interconnected nature of the Internet;

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

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

7 “(A) the foreign government may not in-
8 tentionally target a United States person or a
9 person located in the United States, and shall
10 adopt targeting procedures designed to meet
11 this requirement;

12 “(B) the foreign government may not tar-
13 get a non-United States person located outside
14 the United States if the purpose is to obtain in-
15 formation concerning a United States person or
16 a person located in the United States;

17 “(C) the foreign government may not issue
18 an order at the request of or to obtain informa-
19 tion to provide to the United States Govern-
20 ment or a third-party government, nor shall the
21 foreign government be required to share any in-
22 formation produced with the United States
23 Government or a third-party government;

24 “(D) an order issued by the foreign gov-
25 ernment—

1 “(i) shall be for the purpose of obtain-
2 ing information relating to the prevention,
3 detection, investigation, or prosecution of
4 serious crime, including terrorism;

5 “(ii) shall identify a specific person,
6 account, address, or personal device, or
7 any other specific identifier as the object of
8 the order;

9 “(iii) shall be in compliance with the
10 domestic law of that country, and any obli-
11 gation for a provider of an electronic com-
12 munications service or a remote computing
13 service to produce data shall derive solely
14 from that law;

15 “(iv) shall be based on requirements
16 for a reasonable justification based on
17 articulable and credible facts, particularity,
18 legality, and severity regarding the conduct
19 under investigation;

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

23 “(vi) in the case of an order for the
24 interception of wire or electronic commu-

1 communications, and any extensions thereof, shall
2 require that the interception order—

3 “(I) be for a fixed, limited dura-
4 tion; and

5 “(II) may not last longer than is
6 reasonably necessary to accomplish
7 the approved purposes of the order;
8 and

9 “(III) be issued only if the same
10 information could not reasonably be
11 obtained by another less intrusive
12 method;

13 “(E) an order issued by the foreign gov-
14 ernment may not be used to infringe freedom of
15 speech;

16 “(F) the foreign government shall prompt-
17 ly review material collected pursuant to the
18 agreement and store any unreviewed commu-
19 nications on a secure system accessible only to
20 those persons trained in applicable procedures;

21 “(G) the foreign government shall, using
22 procedures that, to the maximum extent pos-
23 sible, meet the definition of minimization proce-
24 dures in section 101 of the Foreign Intelligence
25 Surveillance Act of 1978 (50 U.S.C. 1801), seg-

1 regate, seal, or delete, and not disseminate ma-
2 terial found not to be information that is, or is
3 necessary to understand or assess the impor-
4 tance of information that is, relevant to the pre-
5 vention, detection, investigation, or prosecution
6 of serious crime, including terrorism, or nec-
7 essary to protect against a threat of death or
8 serious bodily harm to any person;

9 “(H) the foreign government may not dis-
10 seminate the content of a communication of a
11 United States person to United States authori-
12 ties unless the communication may be dissemi-
13 nated pursuant to subparagraph (G) and re-
14 lates to significant harm, or the threat thereof,
15 to the United States or United States persons,
16 including crimes involving national security
17 such as terrorism, significant violent crime,
18 child exploitation, transnational organized
19 crime, or significant financial fraud;

20 “(I) the foreign government shall afford
21 reciprocal rights of data access, to include,
22 where applicable, removing restrictions on com-
23 munications service providers, including pro-
24 viders subject to United States jurisdiction, and
25 thereby allow them to respond to valid legal

1 process sought by a governmental entity (as de-
2 fined in section 2711) if foreign law would oth-
3 erwise prohibit communications-service pro-
4 viders from disclosing the data;

5 “(J) the foreign government shall agree to
6 periodic review of compliance by the foreign
7 government with the terms of the agreement to
8 be conducted by the United States Government;
9 and

10 “(K) the United States Government shall
11 reserve the right to render the agreement inap-
12 plicable as to any order for which the United
13 States Government concludes the agreement
14 may not properly be invoked.

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

19 “(d) EFFECTIVE DATE OF CERTIFICATION.—

20 “(1) NOTICE.—Not later than 7 days after the
21 date on which the Attorney General certifies an ex-
22 ecutive agreement under subsection (b), the Attorney
23 General shall provide notice of the determination
24 under subsection (b) and a copy of the executive
25 agreement to Congress, including—

1 er the executive agreement should be ap-
2 proved or disapproved.

3 “(B) REQUESTS FOR INFORMATION.—

4 Upon request by the Chairman or Ranking
5 Member of a congressional committee described
6 in paragraph (1), the head of an agency shall
7 promptly furnish a summary of factors consid-
8 ered in determining that the foreign govern-
9 ment satisfies the requirements of this section.

10 “(4) CONGRESSIONAL REVIEW.—

11 “(A) JOINT RESOLUTION DEFINED.—In
12 this paragraph, the term ‘joint resolution’
13 means only a joint resolution—

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

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

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

18 ‘Joint resolution disapproving the executive
19 agreement signed by the United States and
20 ____.’, the blank space being appropriately
21 filled in; and

22 “(iv) the matter after the resolving
23 clause of which is as follows: ‘That Con-
24 gress disapproves the executive agreement
25 governing access by _____ to certain elec-

1 tronic data as submitted by the Attorney
2 General on _____’, the blank spaces being
3 appropriately filled in.

4 “(B) JOINT RESOLUTION ENACTED.—Not-
5 withstanding any other provision of this section,
6 if not later than 90 days after the date on
7 which notice is provided to Congress under
8 paragraph (1), there is enacted into law a joint
9 resolution disapproving of an executive agree-
10 ment under this section, the executive agree-
11 ment shall not enter into force.

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

15 “(i) in the House of Representatives,
16 by the majority leader or the minority
17 leader; and

18 “(ii) in the Senate, by the majority
19 leader (or the majority leader’s designee)
20 or the minority leader (or the minority
21 leader’s designee).

22 “(5) FLOOR CONSIDERATION IN HOUSE OF
23 REPRESENTATIVES.—If a committee of the House of
24 Representatives to which a joint resolution of dis-
25 approval has been referred has not reported the joint

1 resolution within 60 days after the date of referral,
2 that committee shall be discharged from further con-
3 sideration of the joint resolution.

4 “(6) CONSIDERATION IN THE SENATE.—

5 “(A) COMMITTEE REFERRAL.—A joint res-
6 olution of disapproval introduced in the Senate
7 shall be—

8 “(i) referred to the Committee on the
9 Judiciary; and

10 “(ii) referred to the Committee on
11 Foreign Relations.

12 “(B) REPORTING AND DISCHARGE.—If a
13 committee to which a joint resolution of dis-
14 approval was referred has not reported the joint
15 resolution within 60 days after the date of re-
16 ferral of the joint resolution, that committee
17 shall be discharged from further consideration
18 of the joint resolution and the joint resolution
19 shall be placed on the appropriate calendar.

20 “(C) PROCEEDING TO CONSIDERATION.—

21 Notwithstanding rule XXII of the Standing
22 Rules of the Senate, it is in order at any time
23 after either the Committee on the Judiciary or
24 the Committee on Foreign Relations, as the
25 case may be, reports a joint resolution of dis-

1 approval to the Senate or has been discharged
2 from consideration of such a joint resolution
3 (even though a previous motion to the same ef-
4 fect has been disagreed to) to move to proceed
5 to the consideration of the joint resolution, and
6 all points of order against the joint resolution
7 (and against consideration of the joint resolu-
8 tion) are waived. The motion is not subject to
9 a motion to postpone. A motion to reconsider
10 the vote by which the motion is agreed to or
11 disagreed to shall not be in order.

12 “(D) RULINGS OF THE CHAIR ON PROCE-
13 DURE.—Appeals from the decisions of the Chair
14 relating to the application of the rules of the
15 Senate, as the case may be, to the procedure re-
16 lating to a joint resolution of disapproval shall
17 be decided without debate.

18 “(E) CONSIDERATION OF VETO MES-
19 SAGES.—Debate in the Senate of any veto mes-
20 sage with respect to a joint resolution of dis-
21 approval, including all debatable motions and
22 appeals in connection with the joint resolution,
23 shall be limited to 10 hours, to be equally di-
24 vided between, and controlled by, the majority

1 leader and the minority leader or their des-
2 ignees.

3 “(7) RULES RELATING TO SENATE AND HOUSE
4 OF REPRESENTATIVES.—

5 “(A) TREATMENT OF SENATE JOINT RESO-
6 LUTION IN HOUSE.—In the House of Rep-
7 resentatives, the following procedures shall
8 apply to a joint resolution of disapproval re-
9 ceived from the Senate (unless the House has
10 already passed a joint resolution relating to the
11 same proposed action):

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

14 “(ii) If a committee to which a joint
15 resolution has been referred has not re-
16 ported the joint resolution within 7 days
17 after the date of referral, that committee
18 shall be discharged from further consider-
19 ation of the joint resolution.

20 “(iii) Beginning on the third legisla-
21 tive day after each committee to which a
22 joint resolution has been referred reports
23 the joint resolution to the House or has
24 been discharged from further consideration
25 thereof, it shall be in order to move to pro-

1 ceed to consider the joint resolution in the
2 House. All points of order against the mo-
3 tion are waived. Such a motion shall not be
4 in order after the House has disposed of a
5 motion to proceed on the joint resolution.
6 The previous question shall be considered
7 as ordered on the motion to its adoption
8 without intervening motion. The motion
9 shall not be debatable. A motion to recon-
10 sider the vote by which the motion is dis-
11 posed of shall not be in order.

12 “(iv) The joint resolution shall be con-
13 sidered as read. All points of order against
14 the joint resolution and against its consid-
15 eration are waived. The previous question
16 shall be considered as ordered on the joint
17 resolution to final passage without inter-
18 vening motion except 2 hours of debate
19 equally divided and controlled by the spon-
20 sor of the joint resolution (or a designee)
21 and an opponent. A motion to reconsider
22 the vote on passage of the joint resolution
23 shall not be in order.

24 “(B) TREATMENT OF HOUSE JOINT RESO-
25 LUTION IN SENATE.—

1 “(i) If, before the passage by the Sen-
2 ate of a joint resolution of disapproval, the
3 Senate receives an identical joint resolution
4 from the House of Representatives, the fol-
5 lowing procedures shall apply:

6 “(I) That joint resolution shall
7 not be referred to a committee.

8 “(II) With respect to that joint
9 resolution—

10 “(aa) the procedure in the
11 Senate shall be the same as if no
12 joint resolution had been received
13 from the House of Representa-
14 tives; but

15 “(bb) the vote on passage
16 shall be on the joint resolution
17 from the House of Representa-
18 tives.

19 “(ii) If, following passage of a joint
20 resolution of disapproval in the Senate, the
21 Senate receives an identical joint resolution
22 from the House of Representatives, that
23 joint resolution shall be placed on the ap-
24 propriate Senate calendar.

1 “(iii) If a joint resolution of dis-
2 approval is received from the House, and
3 no companion joint resolution has been in-
4 troduced in the Senate, the Senate proce-
5 dures under this subsection shall apply to
6 the House joint resolution.

7 “(C) APPLICATION TO REVENUE MEAS-
8 URES.—The provisions of this paragraph shall
9 not apply in the House of Representatives to a
10 joint resolution of disapproval that is a revenue
11 measure.

12 “(8) RULES OF HOUSE OF REPRESENTATIVES
13 AND SENATE.—This subsection is enacted by Con-
14 gress—

15 “(A) as an exercise of the rulemaking
16 power of the Senate and the House of Rep-
17 resentatives, respectively, and as such is deemed
18 a part of the rules of each House, respectively,
19 and supersedes other rules only to the extent
20 that it is inconsistent with such rules; and

21 “(B) with full recognition of the constitu-
22 tional right of either House to change the rules
23 (so far as relating to the procedure of that
24 House) at any time, in the same manner, and

1 to the same extent as in the case of any other
2 rule of that House.

3 “(e) RENEWAL OF DETERMINATION.—

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

8 “(2) REPORT.—Upon renewing a determination
9 under subsection (b), the Attorney General shall file
10 a report with the Committee on the Judiciary and
11 the Committee on Foreign Relations of the Senate
12 and the Committee on the Judiciary and the Com-
13 mittee on Foreign Affairs of the House of Rep-
14 resentatives describing—

15 “(A) the reasons for the renewal;

16 “(B) any substantive changes to the agree-
17 ment or to the relevant laws or procedures of
18 the foreign government since the original deter-
19 mination or, in the case of a second or subse-
20 quent renewal, since the last renewal; and

21 “(C) how the agreement has been imple-
22 mented and what problems or controversies, if
23 any, have arisen as a result of the agreement
24 or its implementation.

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

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

10 “(g) MINIMIZATION PROCEDURES.—A United States
11 authority that receives the content of a communication de-
12 scribed in subsection (b)(3)(H) from a foreign government
13 in accordance with an executive agreement under this sec-
14 tion shall use procedures that, to the maximum extent pos-
15 sible, meet the definition of minimization procedures in
16 section 101 of the Foreign Intelligence Surveillance Act
17 of 1978 (50 U.S.C. 1801) to appropriately protect non-
18 publicly available information concerning United States
19 persons.”.

20 (b) TABLE OF SECTIONS AMENDMENT.—The table of
21 sections for chapter 119 of title 18, United States Code,
22 is amended by inserting after the item relating to section
23 2522 the following:

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

1 SEC. 6. RULE OF CONSTRUCTION.

2 Nothing in this Act, or the amendments made by this
3 Act, shall be construed to preclude any foreign authority
4 from obtaining assistance in a criminal investigation or
5 prosecution pursuant to section 3512 of title 18, United
6 States Code, section 1782 of title 28, United States Code,
7 or as otherwise provided by law.