



19 March 2018

To the Honorable Members of US Congress,

As a coalition of civil society organisations with representation in Europe, we are deeply concerned about the "Clarifying Lawful Overseas Use of Data Act" (the "CLOUD Act"). We are writing to urge you to ensure that the CLOUD Act is kept separate from the omnibus bill. We strongly recommend it go through the committee process in order to have an adequate debate about the domestic and global implications of cross border law enforcement access to data.

The CLOUD Act was introduced to authorise the executive branch of the US government to create agreements with qualifying foreign governments such as the European Union and/or its Member States to facilitate law enforcement access to data. If passed attached to the omnibus bill, Congress would cede broad authority to the Executive, with unclear implications for law enforcement and global human rights with little discussion.

The CLOUD Act allows the US to enter into an agreement with a qualifying foreign government on the basis of generalised conclusions about that government and respect for rights without adequate procedures to review that decision. It provides no mechanism for review of these agreements in the event of democratic backsliding in that country.

As civil society organisations with representation in Europe we draw your attention to procedures against Hungary and Poland by the European Commission and European courts on the basis of violations of human rights and the rule of law, including actions to undermine the independence of the judiciary and attacks on civil society organisations. As drafted, the CLOUD Act would appear to authorise the US Executive to enter into bilateral, data access agreements with such EU Member States.

Therefore, we respectfully request to keep the CLOUD Act separate from the omnibus bill so as to enable a full consideration of the domestic and global implications of the law in committee process.

Sincerely,

Access Now

European Digital Rights (EDRi), a coalition of 35 civil society organisations

Electronic Frontier Foundation

Panoptykon Foundation