

## Institutional Non-Performance of Japanese and U.S. NCPs under the OECD Guidelines

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To: rbc@oecd.org

Cc: info@oecdwatch.org

2025年12月10日 22:10

Dear Secretariat,

Thank you for your reply of 9 December 2025.  
I hereby acknowledge receipt of your message.

However, I must formally record that the substance of your response constitutes a clear instance of institutional non-performance, in direct contradiction to the obligations set forth in the OECD Guidelines for Multinational Enterprises, the Procedural Guidance, and the 2021 OECD Council Recommendation.

To ensure clarity, accuracy, and legal consistency in the international record, I respectfully submit the following points.

### ▼ [1] This Is Not a Company Case – It Is a Systemic Alert

This notification does not concern an individual company dispute.

It concerns the collapse of the OECD's remedy system itself:

- Two National Contact Points (NCPs) refused to process a Specific Instance
- No acknowledgment
- No initial assessment
- No acceptance or rejection decision
- No mediation consideration

This is not a request for adjudication against a company.

It is an institutional alert regarding systemic procedural failure within the OECD mechanism.

Your position that the Secretariat “does not intervene in specific cases” fundamentally mischaracterizes the nature and scope of this notice.

### ▼ [2] Referral to the U.S. NCP Is Institutionally Invalid

Your suggestion to “engage with the U.S. NCP” is procedurally untenable.

On 10 December 2025, the U.S. NCP formally refused to consider my submission, and instead improperly deferred responsibility to the Japanese NCP — an authority that has remained entirely unresponsive since September 2025.

This does not constitute legitimate discretion.

Proper discretion under OECD standards requires:

- A formal acceptance or rejection decision
- An initial assessment
- Screening or evaluation
- A rejection notice with legal justification (if applicable)

The U.S. NCP did none of these.

It did not assess, did not decide, did not explain, and did not document.

It simply displaced responsibility without process or legal basis. This is not a judgment — it is procedural evasion.

Your instruction thus directs a whistleblower to seek remedy from an authority that has already disclaimed all responsibility. This knowingly perpetuates institutional failure and directly contradicts your mandate under the OECD system.

### ▼ [3] The Secretariat Is Bound by Explicit Legal Duties

Under official OECD texts, the Secretariat has **affirmative institutional responsibilities**:

- **Procedural Guidance II.C.3:**  
“The Secretariat may consider issues related to the functioning of NCPs upon request.”
- **2021 Council Recommendation ¶16:**  
“The Secretariat should ensure the effective operation, coherence, and credibility of the NCP system.”
- **2021 Council Recommendation ¶20:**  
“The Secretariat should gather and assess information concerning systemic issues and report them to the Investment Committee.”

The present case — in which **two NCPs have failed to act** and **one has actively disclaimed responsibility** — represents a **textbook example** of systemic failure that **requires institutional engagement**.

To decline engagement would be to render these obligations **void**, and to initiate **structural self-nullification** of the OECD framework.

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#### ▼ [4] Your Response Creates a Dangerous Precedent

Your position — that the OECD Secretariat will take **no action** even when two NCPs fail — sets the precedent that:

- Whistleblower protection is illusory
- NCP mandates are optional
- OECD Guidelines lack institutional enforceability

If left uncorrected, this precedent will erode international confidence in the OECD remedy mechanism and expose whistleblowers to unmitigated risk.

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#### ▼ [5] This Will Now Be Recorded as Institutional Non-Performance

Your reply will now be formally recorded as:

- Failure to uphold **Chapters I-4, II-2, and VIII-1** of the OECD Guidelines
- Violation of **Paragraphs 16 and 20** of the 2021 Council Recommendation
- Procedural breach under **II.C.3** of the Procedural Guidance

#### ⌚ Evidence No.80 – Secretariat’s Procedural Refusal

This documentation will be transparently shared with:

- **OECD Watch**
- **ESG rating agencies** (MSCI, Sustainalytics, FTSE Russell, ISS ESG, S&P Global ESG)
- **International stakeholders**, transparency networks, and media outlets  
(e.g., Financial Times, Reuters, Responsible Investor)

Unless corrective action is taken, your reply will be recognized internationally as **the first institutional confirmation that the OECD permits NCP impunity without remedy**.

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#### ✓ [Final Request and Clarification]

I hereby formally request:

A clear written statement by **2 January 2026** on whether the Secretariat will initiate or consider an institutional review of this dual NCP non-performance.

- **If the Secretariat engages**, it fulfills its oversight mandate.
- **If the Secretariat declines or remains silent**, it confirms that the OECD system has **no enforceable remedy mechanism**, and this will be documented accordingly.

Either outcome will be recorded. Only one preserves institutional credibility.

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This communication is submitted in **good faith**, based on verified evidence and binding institutional texts. Its purpose is to **uphold – not undermine – the integrity** of the OECD Guidelines.

I strongly urge reconsideration.

Sincerely,  
**Shunsuke Kimura**  
Whistleblower (Former Infroneer Group Employee)  
 <https://www.whistleblower-protection.org>

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2025年12月9日(火) 21:26 <[rbc@oecd.org](mailto:rbc@oecd.org)>:

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- Transparency;
- Accountability; and
- Good faith.

Further details of Japan NCP non-performance are documented on my site at:

- <https://www.whistleblower-protection.org/ncp-japan-nonperformance>

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#### b. U.S. NCP

- 15 October 2025: I submitted a Specific Instance to the U.S. NCP.
- 3 November 2025: I sent a formal follow-up asking for confirmation and procedural clarification.
- Mid-November 2025: I received a **purely formal acknowledgement** confirming receipt and explaining the office closure due to a government shutdown.

However:

- By 1 December 2025 (17:00 EST), no decision on acceptance, no initial assessment, and no indication of mediation or constructive dialogue had been provided.

While I recognize that **budgetary constraints or shutdowns** may have some explanatory value, the whistleblower system is grounded in:

- UNCAC Article 33 (obligation to protect whistleblowers); and
- OECD Guidelines Chapter II paras. 2 and 11 (respect for human rights and access to remedy).

In substance, NCP functions under these frameworks should be understood as **non-discretionary**: they are not optional and should not be fully suspended by a temporary administrative shutdown.

From the standpoint of the **OECD Procedural Guidance I.C.2 / II.C.3–4**, the core procedural duties (acceptance decision, initial assessment, consideration of mediation) **cannot be wholly excused** on the basis of a shutdown.

Further details of U.S. NCP non-performance are organized on my site (Evidence Nos. 60 and above):

- <https://www.whistleblower-protection.org/ncp-usa-nonperformance>

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#### c. Context as G7 Member States

Japan and the United States are both **G7 members** and have played central roles in shaping and promoting the OECD Guidelines and international norms on responsible business conduct.

The fact that, in both countries, the NCP system has **failed to function**—to the point that a fully documented Specific Instance has been effectively ignored—constitutes a **serious institutional credibility problem** for the OECD framework as a whole.

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### (3) OECD Level – Loss of International Credibility

In light of:

- OECD Guidelines
  - Chapter I para. 4 (effectiveness and credibility of the system);
  - Chapter II paras. 2 and 11 (human rights and access to remedy);
  - Chapter VIII para. 1 (need for remedy and redress);
- OECD Procedural Guidance
  - paras. I.C.2 and II.C.3–4;
- 2021 OECD Council Recommendation
  - paras. 16 and 20 (transparency, accountability, good faith, follow-up in cases of non-performance);

I must conclude that there are serious deficiencies in terms of transparency, accountability, and good-faith engagement at the systemic level.

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## 4. Position of the Whistleblower

I worked for Maeda Corporation, a core subsidiary of Infroneer Holdings in Japan. I personally experienced:

- Concealment of occupational accidents;
- Accounting manipulations; and
- Breakdown of internal reporting mechanisms.

Despite reporting internally, to administrative bodies, and through international channels, the company proceeded with retaliatory dismissal, and the relevant NCPs remained silent.

I have sacrificed my reputation, career, health, and livelihood in an attempt to restore institutional trust, yet no protective function of the system has been activated.

This is not just an individual misfortune; it is a structural national failure, and it requires international scrutiny.

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## 5. Institutional Basis and the Non-Discretionary Nature of Duties

As noted, OECD Procedural Guidance II.C.3–4 states:

“NCPs shall acknowledge receipt and keep parties informed throughout the process.”

Here, “shall” clearly signals a mandatory duty, not a discretionary option.

Additionally, Procedural Guidance II.C.4 explicitly provides that, where an NCP fails to act in line with the Guidance, the matter may be referred to the Investment Committee.

The 2021 OECD Council Recommendation, paras. 16 and 20, calls for:

- Ensuring transparency, accountability, and good-faith handling; and
- Oversight and follow-up by the Investment Committee in cases of non-performance.

In other words, the framework does not contemplate leaving NCP non-performance unaddressed.

**Key point:**

This case concerns non-performance at a stage prior to any substantive evaluation of the merits. There has been no real acceptance decision, no effective initial assessment, and no mediation attempt. The room for “policy discretion” at the national level is therefore extremely limited.

Accordingly, the silence of both NCPs must be understood as a renunciation of procedural duties under:

- Procedural Guidance I.C.2 / II.C.3-4; and

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