

**SUMMARY ANALYSIS**  
**Proposals for the ISU 50th Ordinary Congress 2004**  
**Amendments to the Constitution and Regulations**  
March 16, 2004

based primarily on a “Detailed Analysis” originally distributed by  
Publius  
(Acton/Djilas/Duanmu/Ibsen/Remarque/Sakharov/Sakigake/Zola)  
March 6, 2004

see: <http://www.frogsonice.com/skateweb/articles/publius/>

**Parts I - VI of this Summary Analysis are shown on separate documents.**

**VII. PROPOSED “NEW 2006 CONSTITUTION”**

If required to vote on the “New 2006 Constitution” as a whole instead of on specific and separately identified provisions of it, the Members should **REJECT** it. There are two overall flaws in the Proposal:

- 1 Creation of additional levels of management and increased power and authority of the “Secretary General” and the “Board of Directors” effectively reduces the ability of the Members to supervise and control the overall operations of the ISU. That approach is contrary to fundamental protections of Members based upon provisions of Swiss law:**
  - (a) The Constitution of the ISU cannot modify or supersede requirements of Swiss law. [Civil Code Article 63 para 2]
  - (b) The Congress of the ISU is “the highest organ” of it as an association recognised under Swiss Law. [Civil Code Articles 60 para 1 and 64 para 1]
  - (c) Specifically, the Congress “has control of the other organs” of the ISU and “can at any time revoke the authority conferred upon them”. [Civil Code Article 65 para 2]
  - (d) Moreover, the “power of revocation on material grounds is an absolute right granted” to the Congress by law. [Civil Code Article 65 para 3]
  - (e) Quite tellingly, the law requires that resolutions affecting the ISU (including those which result in amendment of the Regulations) must be passed by the Congress. [Civil Code Article 66 para 1]
  - (f) Use of the term “Board of Directors” is both erroneous and misleading as the members of it are not elected by the Members. It also leaves great potential for confusion as Swiss law provides that the “directors have the right and duty to manage the affairs of the association”. The Members must retain the sole authority to elect any organ of the ISU which might be recognised under Swiss law as a “Board of Directors”. [Civil Code Article 69]

**2 The Proposal will have the effect of making the Sections of the Congress (both Speed and Figure) at least powerless and potentially meaningless.**

- (a) It will move significant portions of the Special Regulations into the General Regulations. Matters of a technical nature unique to either branch of the sport (Speed or Figure) will then be subject to decisions by delegates and representatives of the other branch having no expertise or even experience in the matters covered.
- (b) It will remove from the Sections the exclusive power over the portions of the technical rules which are unique to either branch of the sport and which remain in the Special Regulations. Those can be modified, adopted, superseded or suspended by vote of the applicable Technical Committee, subject to the approval of the one organ in the ISU which has absolutely **NO** expertise in technical aspects of the sport: the Board of Directors. Indeed, the Sections (Speed and Figure) will no longer consider and vote on motions to amend the Special Regulations except in the context of “take-it-or-leave-it” objections.
- (c) The Members in each Section will have the opportunity to object to Special Regulations adopted (or proposed for adoption) by the Technical Committees and approval by the Board of Directors, but they will not have the authority to submit proposals or modify ones submitted by the applicable Technical Committee: the choice will be to accept a proposed Regulation as written or to object to reject it outright.

Those very significant defects in the Proposal to adopt the proposed New 2006 Constitution will come at the expense of the Members and the rights which they have as creators of the ISU. Instead, they would become creatures of it. The following table identifies certain additional serious flaws in the identified portions of the Proposal:

Article	Topic Description	Observations / Comments
16/2	President	This provision of the New 2006 Constitution grants additional authority to the President, but it eliminates the component of responsibility. It leaves an avenue for abuse and may even encourage it.
17	Functions of Council	This provision appears to grant authority to the Council but actually interferes with it. First, it removes the power of the Council over the “management of the affairs of the ISU”. Second, it limits the power of the Council by providing that dismissal of the Director General requires a supermajority of 2/3rds <u>and</u> even then cannot be done if the President does not agree with such dismissal.
18	Director General	These provisions appear to grant exclusively to the Director General the authority for management of the ISU which is otherwise reserved under Swiss law to the Council. Many key actions of the Director General are not even subject to the approval of the Council but instead merely must be reported to it.

Article	Topic Description	Observations / Comments
19/2	Chairman of the Board of Directors	The nature of this position and the qualifications of the person who would fill it are obscure. The provisions require the person to be “independent” but also provides that he or she may be compensated by the ISU and further provides that he or she “reports” to the President -- both of which mean that such person cannot be “independent”. The Chairman of the Board is obligated to “endeavor” to discharge the duties of the office “in accordance with the decisions of the Congress, the Council and the Board of Directors.” Failure to do so should instead be grounds for immediate dismissal.
19/4	Assistance to the Board of Directors	This provision would require the Technical Committees to provide assistance to the Board of Directors (actually, merely a committee of persons having the word “director” in their title) rather than the other way around. Indeed, this provision authorises this committee of “directors” to “oversee and supervise” specified areas of ISU activity. In other words, a group of appointed (and potentially remunerated) individuals will have authority over organs elected by the Members and acting on their behalf: the Technical Committees.
19/5	Functions of the Board of Directors	This provision of the New 2006 Constitution actually grants to this group of appointed (and potentially remunerated) individuals the collective ability to <u>veto</u> actions and decisions of the Technical Committees. Even the Council does not currently have that authority.
20/2/e)	Technical Committees members and Eligibility	Each Technical Committee will have 6 members: 4 elected by the Members (including the Chair) and 2 appointed by the Council. Only the 4 elected members will have the experience and expertise currently required of all 5 members of the Technical Committees. The Members should also give serious consideration to the specific exemption from the eligibility requirements of Rule 102 as there are non-financial reasons why a person might lose eligibility, but such person would still be permitted to serve on the Technical Committee if she or he is a coach.
20/3	Functions of the Technical Committees	The current powers of the Technical Committees with respect to evaluations and assessments of officials would continue <u>except</u> for “disciplines where an ISU Officials Assessment Commission is established.” The New 2006 Constitution creates such Commission <u>only</u> for the Figure Skating branch and further provides that it is appointed by the Council. As a result, the Technical Committees in the Figure Skating branch will have virtually <u>no meaningful role</u> even though a majority of the members of each will continue to be elected by the Members.

Article	Topic Description	Observations / Comments
<b>VII/A/2</b>	Proposals to Congress	<p>Members are currently entitled to receive printed copies of all Proposals by not later than February 15 preceding a Congress. The New 2006 Constitution would result in the Members getting a “summary” of Proposals 15 days earlier but would not actually receive the text of Proposals until <u>6 weeks later</u> -- well after the World Championships when they would otherwise have an opportunity to discuss the Proposals and the specific ideas behind them.</p> <p>Members will be able to submit proposals for the Special Regulations to the Technical Committees, but must do so by not later than <u>September 1 of the year prior</u> to the Congress. That is unreasonable and will mean that a full competitive season will be completed between that deadline and the Congress.</p>
<b>VII/A/25</b>	Invalid Ballots	<p>This Provision would require Members to vote for the full number of positions being elected, even if the did not believe there were qualified candidates for those positions. This Provision would also prohibit “write-in” votes. Both restrictions infringe on the rights of the Members.</p>