

**DETAILED ANALYSIS**  
**Proposals for the ISU 50th Ordinary Congress 2004**  
**Amendments to the Constitution and the General Regulations**

Publius  
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**IV. Proposed Rules for the New Judging System**  
(see separate Introduction)

The technical details of the un-numbered Proposal identified as “D. New Judging System” (the “NJS Proposal”) are beyond the scope of this Analysis. There are, however, various critical features of the NJS Proposal which should be considered by the Members as part of their general awareness of and potential concern for principles of governance of the ISU. Those include the following:

- 1 The Introduction to the NJS Proposal identifies an “ad hoc Commission assigned to perfect the NJS”, two members of which appear to be paid consultants or even employees of the ISU. The other members are a current Technical Committee Chair, a current Technical Committee member, and a former Technical Committee Chair who is currently a member of the Council.
  - ▶ *The text of Urgent Proposal No. 4 submitted to the 49th Congress and as reflected in Rule 121 para 3 of the 2002 General Regulations specifies that the New Judging System was to be subjected to “progressive experience and testing.”*
  - ▶ *The Introduction does not explain why the ISU Office Holders elected by the Members to oversee the technical aspects of the sport (the Chairs and members of the applicable Technical Committees) were limited to a minor function in the development and testing of the system and played no role all in its initial creation.*
  - ▶ *Indeed, the Introduction does not even demonstrate an awareness of the differences between “developing” and “testing” much less indicate that any actual testing was done.*
  
- 2 The Introduction includes a separate statement purporting to authorise the Technical Committees (Figure Skating, Ice Dancing, Synchronized Skating) to “delete and/or modify any other rule which they will identify as incompatible with this new rule prior to the printing of the new Special Regulations.” Thereafter, the Council will be authorised to do the same by issuance of a Communication to that effect.
  - ▶ *That procedure conflicts with Articles 64, 65 and 66 of the Swiss Civil Code: only the Members acting in Congress can adopt, modify, amend or suspend provisions of the Constitution or Regulations of the ISU unless the Constitution itself*

*specifically authorises the Members to delegate that authority to any other organ of the ISU. Even that procedure would be subject under Swiss law to the right of the Members acting in Congress to revoke any such action.*

- ▶ *In any event, what have the Technical Committees been doing all this time if they have not already completed such review of the other Rules? The Members are entitled to know which Rules are deemed to be “incompatible” with the new rules and to have that information before they vote. Otherwise, they cannot examine the impact of adopting the rules for the New Judging System and thus cannot make an informed decision as to whether it should be approved.*
- ▶ *The “reasons” offered in the Introduction conveniently ignore (and seek to induce the Members to overlook) the fact that the problems identified during the 2002 Olympic Winter Games would occur with any system if the officials intentionally act dishonestly. The New Judging System actually provides additional opportunities for such dishonesty by increasing the number of marks awarded separately: a discrepancy might not be noteworthy for any one mark but taken as a group artificially and improperly change the results. The approach of the Council as evidenced by Communications No. 1197 and 1206 and as continued in the NJS Proposal do not to prevent such abuse or even discourage it. Instead, it will make sure that it cannot be discovered until well after the event occurs, if at all.*

3 The NJS Proposal notes that, if the New Judging System is approved, “an extensive training program for officials is planned and a corresponding budget has been foreseen.”

- ▶ *The New Judging System itself has cost a great deal of money at a time when revenues of the ISU are being squeezed. The Members have not been informed as to what those costs have been, whether they have been borne by the ISU and if so which budget item was authorised for that purpose, whether any persons or parties other than the ISU have any proprietary rights to the system used for it or any component of such system, whether additional costs will need to be incurred prior to full operation and if so the nature of those costs, and whether there will be ongoing costs of the New Judging System if it is approved.*
- ▶ *The Members should insist that the NJS Proposal be modified to specify that use of the New Judging System will not result in increased costs to the Members or, if it does, that the ISU will bear all of those costs. The ISU press release of 16 February 2004 asserts that the New Judging System will be available to the Members “for a very reasonable cost.” It makes that claim in the context of the provision of the NJS Proposal which would require that the New Judging System must be used in all International Events commencing with the 2005-06 season. It also makes that claim in the context of the Members themselves deciding “whether to implement the New Judging System at national and club events.”*
- ▶ *The developers of the New Judging System and the proponents of the NJS Proposal do not seem to have even a vague understanding of what would be “reasonable” in terms of additional costs to the Members and/or in terms of the physical environment in which many club and even national events are conducted. In contrast, Proposal No. 114 recognises that Members could be significantly damaged if they have to make a choice between (a) incurring the costs*

*for utilising the New Judging System, or (b) putting their competitors at a disadvantage in having to train and compete under one system and qualify under it for ISU Championships, only to have a short interim period for training to compete under a different system at the ISU Championships.*

4 Proposal No. 116 would repeal Rule 121 para 3 in its entirety. The reason stated is because it will “be replaced by the proposal adopting the ‘New Judging System’ ”. The Reason further states that such proposal (presumably the NJS Proposal as it appears to be part “D” of Section IV of the Agenda) will be “included in the Agenda of the Figure Skating Section”.

- ▶ *A vote on Proposal No. 116 would normally occur prior to commencement of the Figure Skating Section proceedings. Is it the intention of the Council that Rule 121 para 3 be rescinded even if the Figure Skating Section does not approve the NJS Proposal? If not, Proposal No. 116 should be referred to the Figure Skating Section before any vote by the full Congress before any vote by the full Congress.*
- ▶ *As a matter of procedure, the NJS Proposal might properly be considered by the full Congress after the Figure Skating Section has voted (and only if that Section has voted to approve it), if and only if implementation of the NJS Proposal would result in additional expenditures of the ISU. The NJS Proposal gives no indication that there would be any such expenditures and thus the vote of the Figure Skating Section would be final.*
- ▶ *The absence of a budget for the NJS Proposal is a violation of Section A. para 2.b) of the Procedural Provisions and thus approval of it would be subject to challenge under Swiss law at any time as a “nullity”: a void action.*
- ▶ *In any event, the Figure Skating Section should vote in Proposal No. 116 to confirm its agreement with the position apparently taken by the Council: the provisions of Rule 121 para 3 should cease to have any force or effect whatsoever.*

The press release issued by the USA Figure Member dated 16 January 2004, and posted to its web site, highlights certain fundamental problems with the New Judging System:

1. Adjustments still need to be made to improve the system, with particular emphasis on the judging and understanding of the five components.
2. Financial feasibility studies need to be disclosed and distributed before the ISU Congress can responsibly adopt any additional financial responsibility.
3. The ISU calendar of events will have to be carefully adjusted to accommodate the use and shipping of equipment as well as the availability of officials to cover these events.
4. The ISU needs to demonstrate an effective accountability procedure.

5. All federations in the ISU need time to assess and implement integration of this system into their present judging structure.

“Probationary” use of the New Judging System would be justifiable only if that means use of it in parallel with the existing system of judging, with the existing system used to determine the official results of any competition. The identified defects in the New Judging System are valid. It would be both improper and unfair to the competitors to use the results of the New Judging System to determine the outcome of the ISU Championships or of the 2006 Olympic Winter Games. If the Figure Skating Section of the Congress determines that the New Judging System should continue under development and testing, it should also adopt a moratorium on its use (other than in such “probationary” status as thus described) until after the 2006 ISU Championships.

If such parallel testing / probationary use results in correcting the problems addressed in the 16 January 2004 Press Release by the USA Figure Member (and others which various Members and other observers have identified), the Figure Skating Section would then have the opportunity at the 2006 Congress to adopt such refined version of the New Judging System for use at the 2007 and 2008 ISU Championships. That would still allow the Members to examine the actual results at the 2008 Congress before deciding whether to adopt it permanently and for use at the 2010 Olympic Winter Games. The thorough and deliberative approach which that represents is consistent with major changes made to the sport in such prior instance as (a) adoption of a Short Program for Paris and then for singles, (b) elimination of compulsory figures, (c) use of “factored placements”, *etc.* It would be improper to make short-term decisions for a sport of such historical endurance as figure skating.

On the implementation procedures and schedule specified in the NJS Proposal, the Members should **REJECT** the NJS Proposal by vote in the Figure Skating Section of the Congress.