



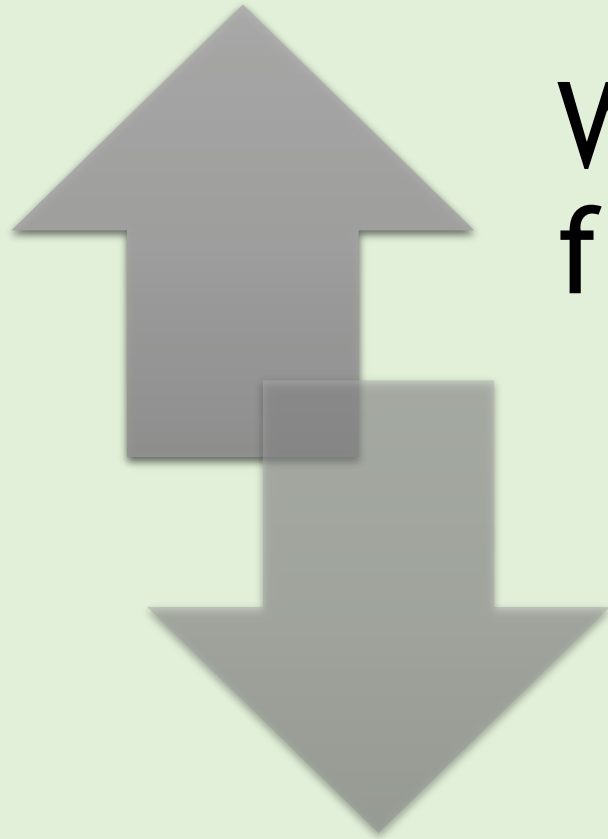
# Best interests of the child and the right to be heard

Brussels, 10<sup>th</sup> Dec 2014

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# Concept of best interests



Warm and  
furry?



Complex  
and  
challenging

$$\frac{\partial}{\partial a} \ln f_{a, \sigma^2}(\xi_1) = \frac{(\xi_1 - a)}{\sigma^2} f_{a, \sigma^2}(\xi_1) = \frac{1}{\sqrt{2\pi\sigma}} \exp\left\{-\frac{(\xi_1 - a)^2}{2\sigma^2}\right\}$$
$$\int_{\mathcal{R}_n} T(x) \cdot \frac{\partial}{\partial \theta} f(x, \theta) dx = M\left(T(\xi) \cdot \frac{\partial}{\partial \theta} \ln L(\xi, \theta)\right) = \int_{\mathcal{R}_n} T(x) \cdot \left(\frac{\partial}{\partial \theta} \ln L(x, \theta)\right) \cdot f(x, \theta) dx = \int_{\mathcal{R}_n} T(x) \cdot \left(\frac{\partial}{\partial \theta} \frac{f(x, \theta)}{f(x, \theta)}\right) f(x, \theta) dx$$
$$\int_{\mathcal{R}_n} T(x) \cdot \left(\frac{\partial}{\partial \theta} \ln L(x, \theta)\right) \cdot f(x, \theta) dx = \int_{\mathcal{R}_n} T(x) \cdot \left(\frac{\partial}{\partial \theta} \frac{f(x, \theta)}{f(x, \theta)}\right) f(x, \theta) dx$$
$$\frac{\partial}{\partial \theta} \int_{\mathcal{R}_n} T(x) f(x, \theta) dx = \int_{\mathcal{R}_n} \frac{\partial}{\partial \theta} T(x) f(x, \theta) dx = \int_{\mathcal{R}_n} T(x) \cdot \frac{\partial}{\partial \theta} f(x, \theta) dx$$



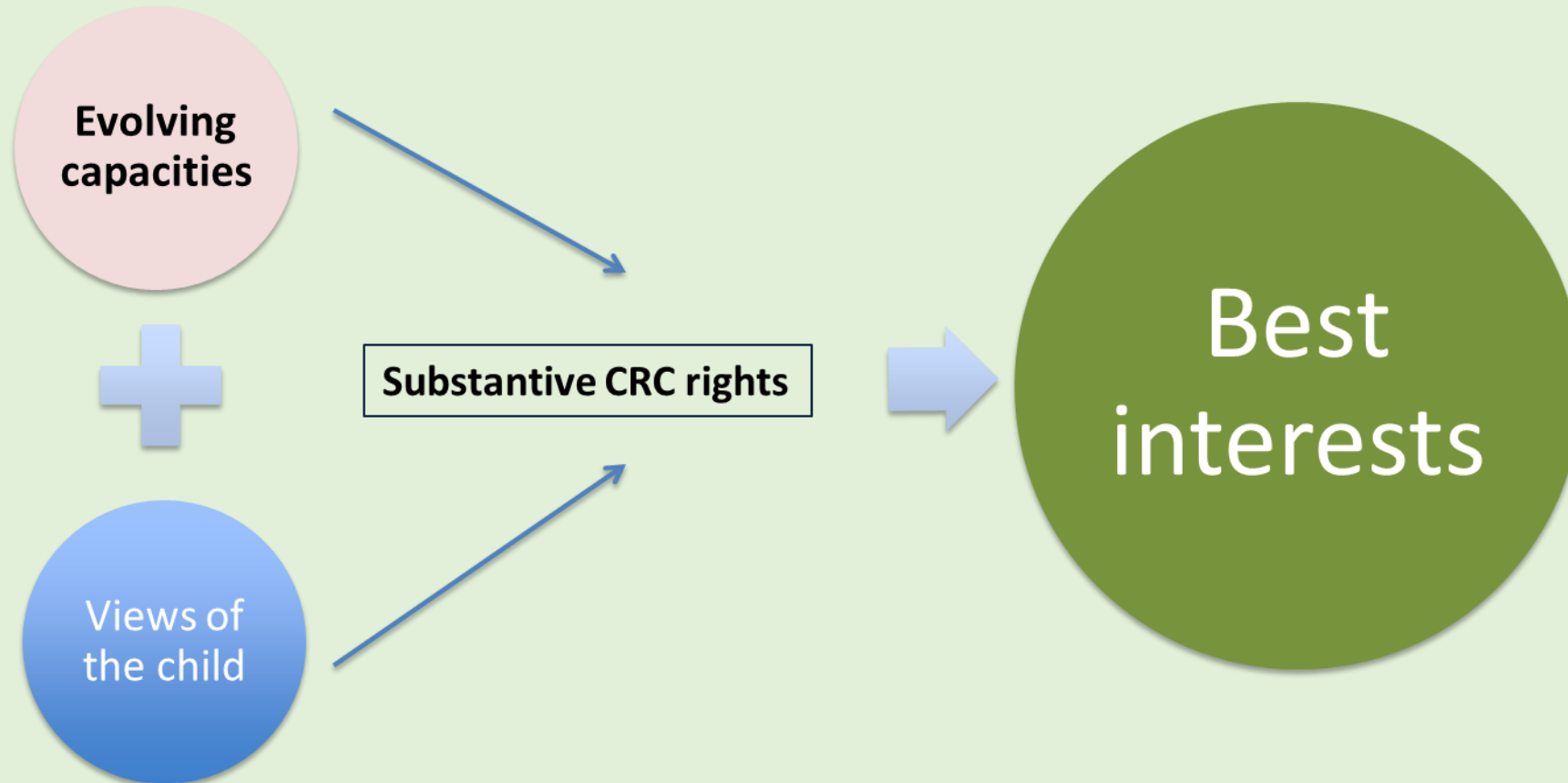
# Considerations in determination of best interests

- > Must be guided by the realisation of all rights in the CRC
  - > Must adopt a holistic approach to the CRC rights
- > Must take account of the views of the child, in accordance with their age and maturity



**So what does this mean in practice?**

# Engagement of the child in determination of best interests

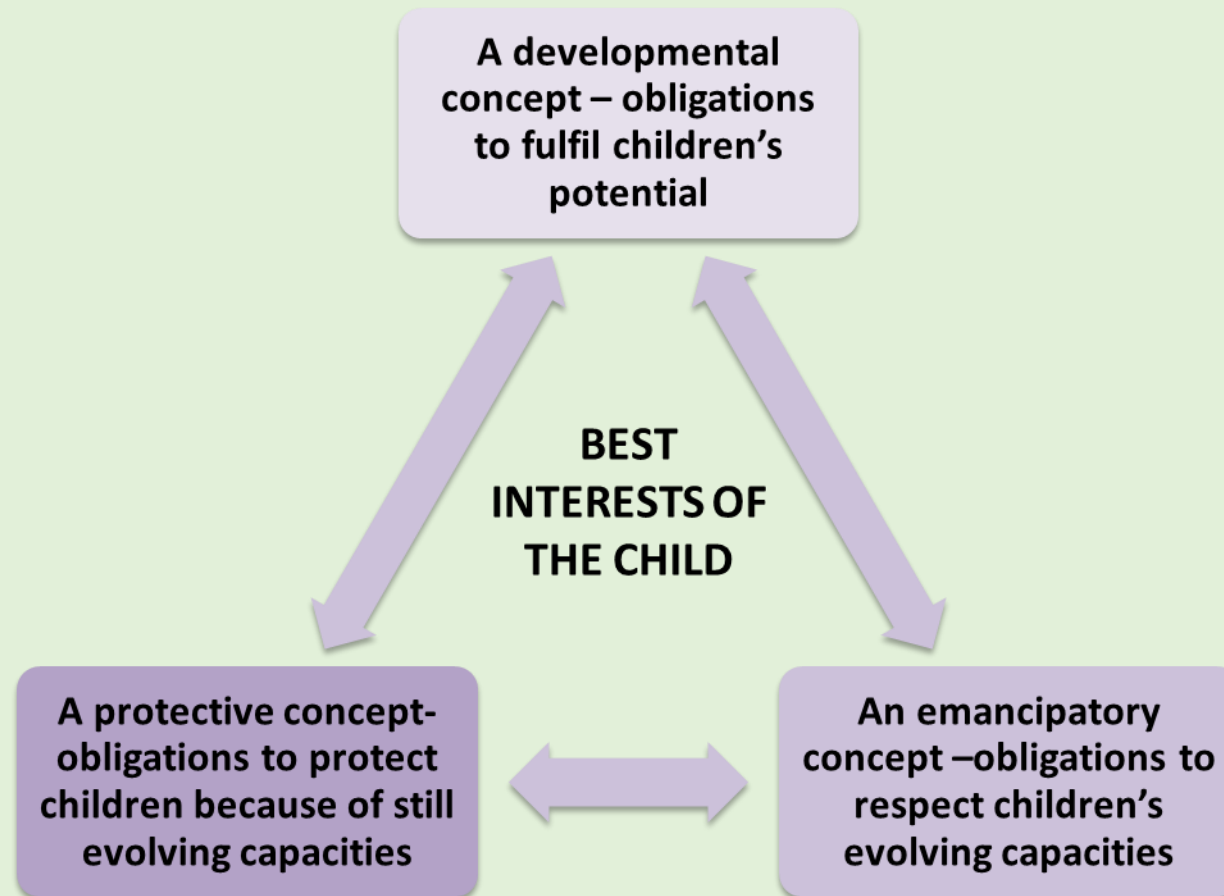




# Article 5: Evolving capacities of the child

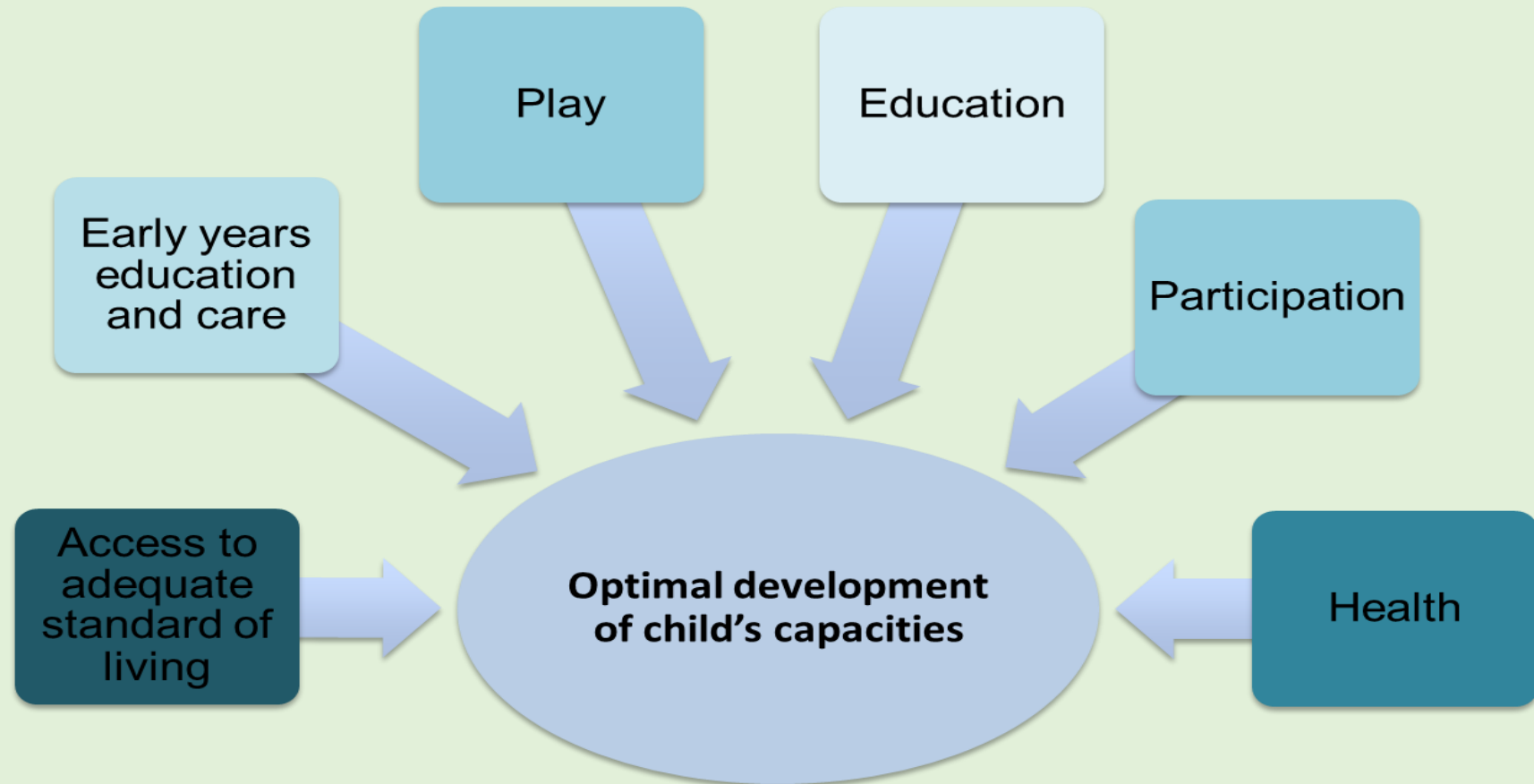
‘States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, *in a manner consistent with the evolving capacities of the child*, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention’

# An approach to understanding evolving capacities



# Best interests through fulfilment of children's capacities

## A DEVELOPMENTAL CONCEPT







# Best interests through respect for children's capacities AN EMANCIPATORY CONCEPT

- > Influence of culture and context
- > Limitations of assessment tools in determining competencies
  - > Invisibility of children's competencies and agency

NURSERY  
CLASS

CHRIS  
MADDEN



"That's a LOVELY drawing, Sophie.  
Now let's do another one with Mummy's  
head like a great big round balloon"



# Best interests through protection of children's capacities

## A PROTECTIVE CONCEPT

- > Balancing risks of over and under protection
  - > Inconsistencies in 'protective' legislation
- > Protection or competence as determinants of legal frameworks
  - > Involving children in their own protection

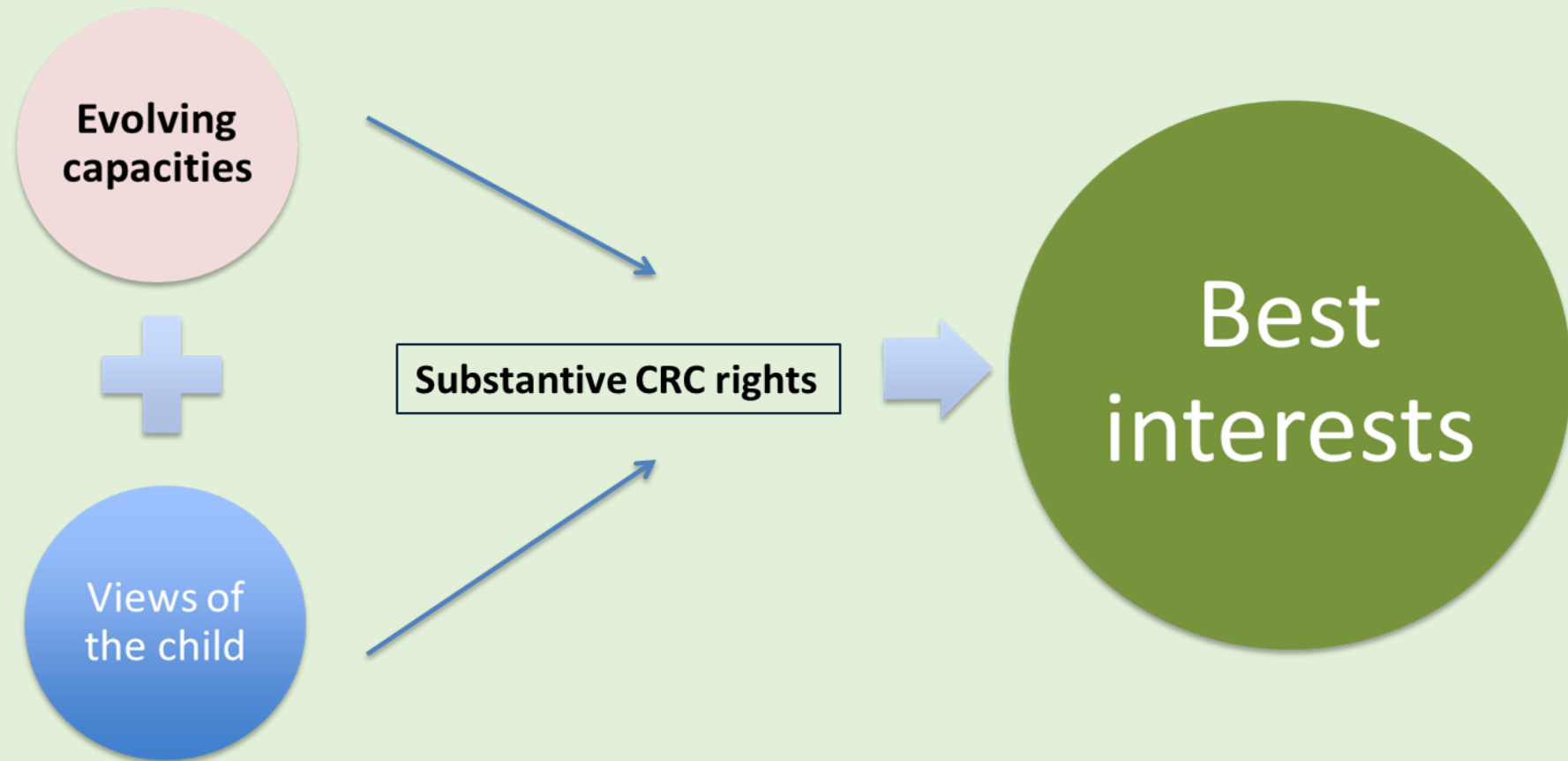


# Article 12: the views of the child

- > Both a substantive and procedural right
- > Best interests and views of the child are complementary - best interests not a 'trump card'
  - > Perspective of the child is integral to determination of best interests
    - > Article 3 to determine best interests
    - > Article 12 the methodology through which to achieve that determination
- > Important to recognise impact of failing to respect children's views



# Returning to the model... A case study





# Conclusions

- > Best interests not a stand alone principle
- > Must be understood and applied within the context of the CRC as a whole
  - > Will only be achieved through realisation of rights
- > Can only be determined with reference to Article 5 and Article 12
  - > Must never be used simply to trump other rights