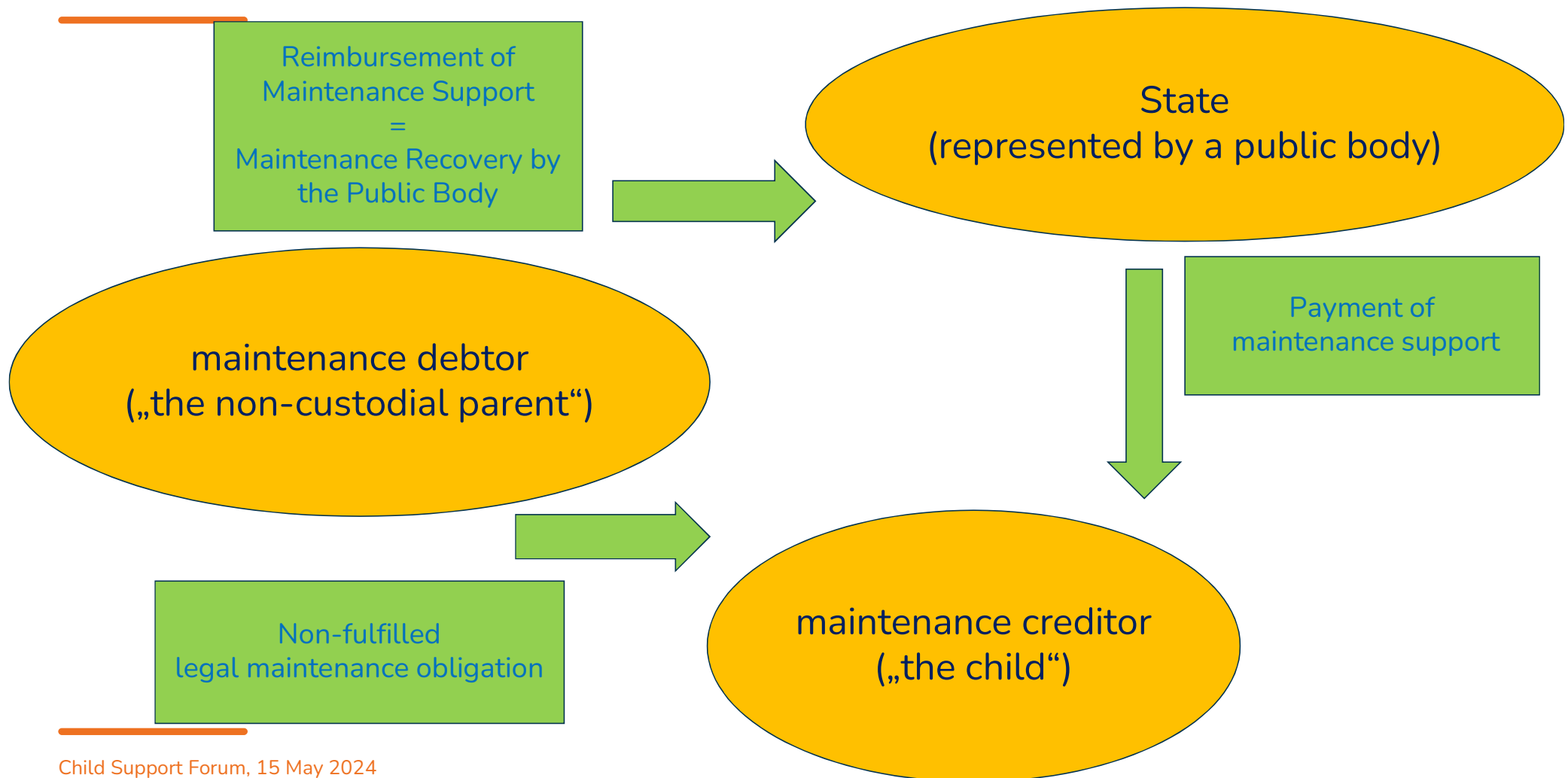


Child Support Forum May, 15th 2024

**Tensions between public maintenance support,
refinancing needs and debtor protection**

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What is meant by „Maintenance Recovery by Public Bodies“?



How can a Public Body legally become a Maintenance Creditor?

Cessio Legis/Subrogation

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Subrogation or cessio legis is a method of transferring claims. It is a triangular legal transaction. The holder of a claim (child as maintenance creditor) transfers to the beneficiary of the subrogation (the public body) the claim that the former holds against a third party who is his own debtor (the non-custodial parent).

The transfer happens automatically by operation of law when the maintenance support is paid.

Administrative transition act or contract

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As in the case of *subrogation*, the public body becomes the creditor of the maintenance claim, but this requires an administrative decision or a contract between the child/the custodial parent and the public body.

The transfer does not happen automatically by operation of law.

One goal, different granting systems!

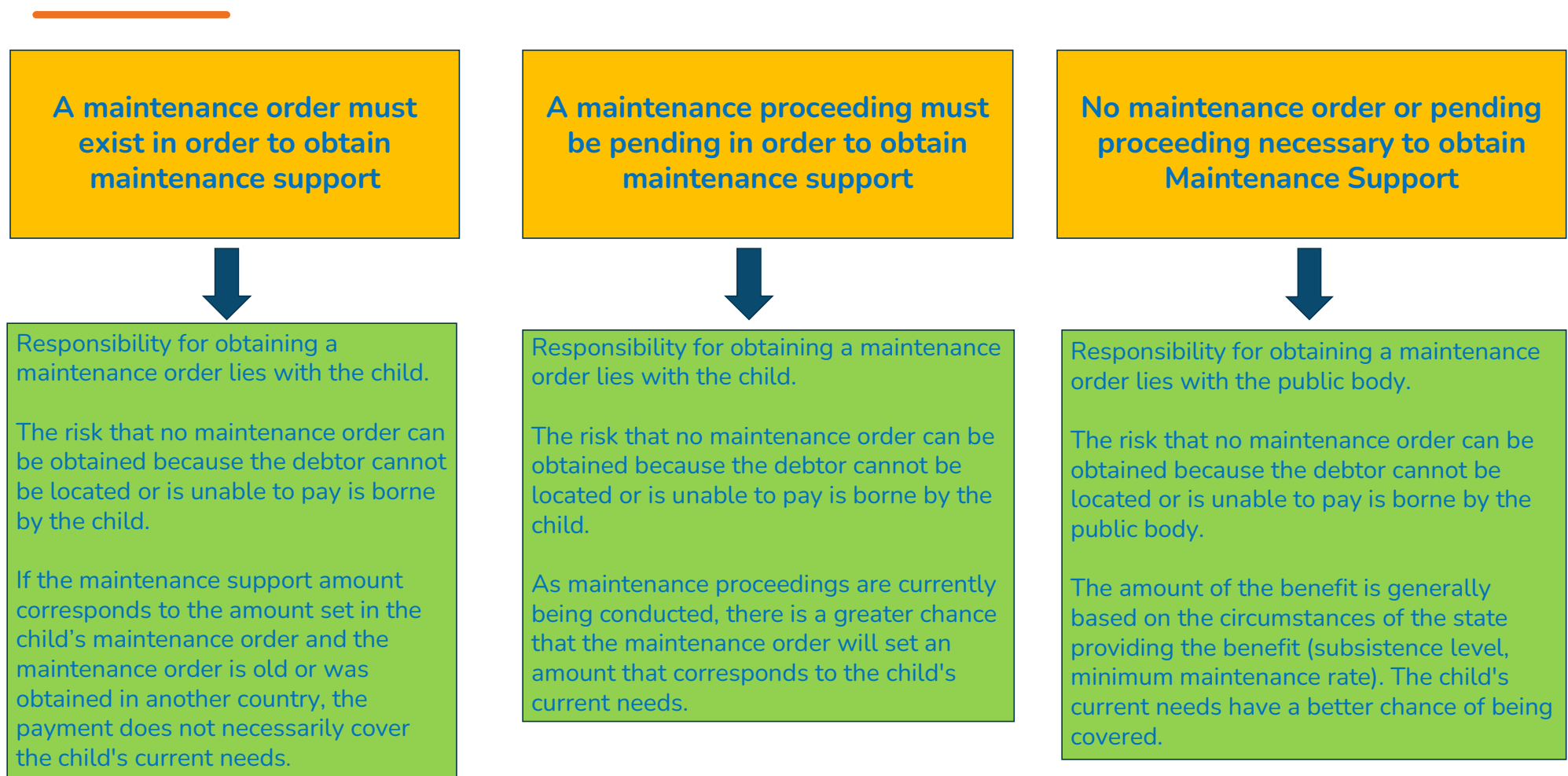
One goal:

Reducing child poverty by paying social benefits when maintenance debtors fail to pay child maintenance.

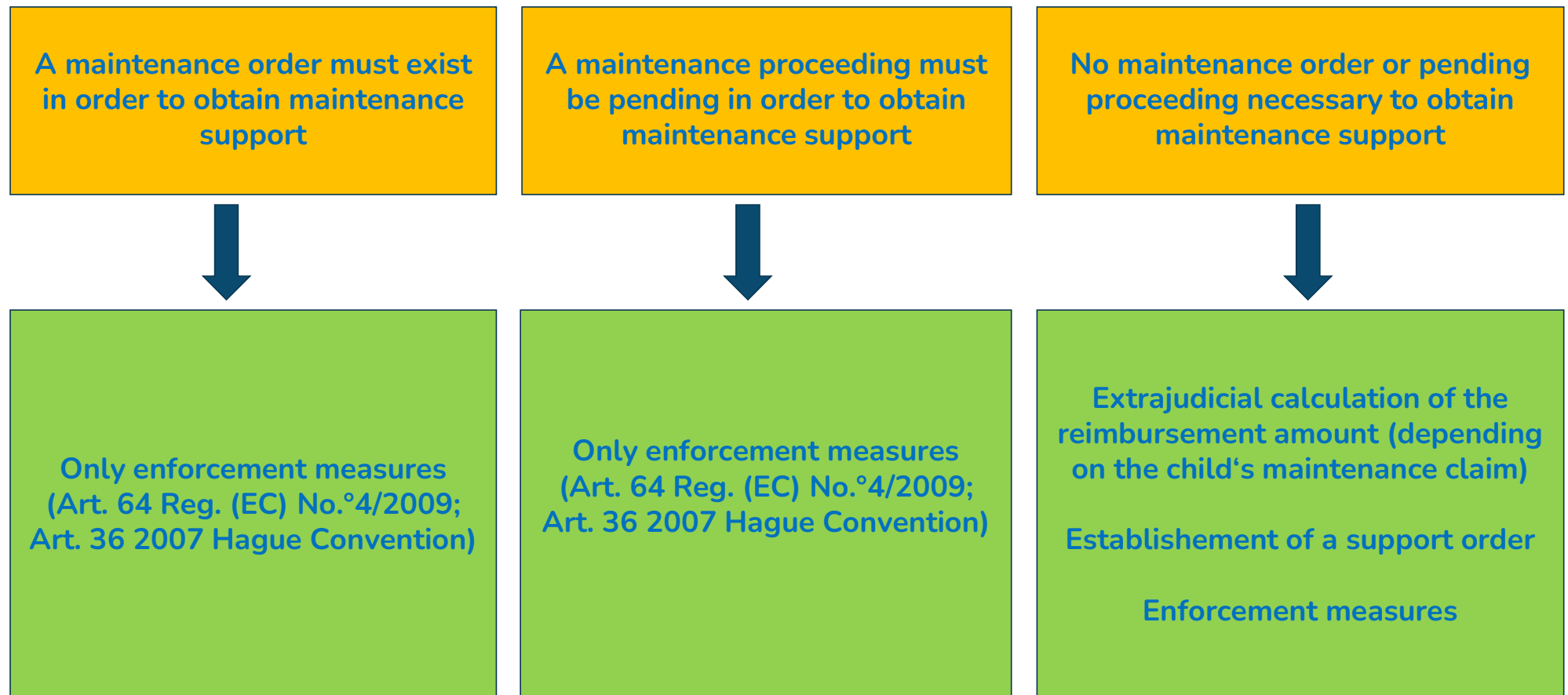
Different granting systems:

- A maintenance order of the child must exist before maintenance support is paid
- A maintenance proceeding must be pending
- No maintenance order or pending proceeding is necessary to obtain maintenance support payments

Link between granting conditions and meeting the child's needs



Link between granting conditions and recovery activities by public bodies



Difficulties linked to the calculation of the reimbursement amount and the establishment of support orders by public bodies

- Difficult calculation of the amount to be reimbursed because of debtor protection provisions like e.g. reference to the law applicable to the maintenance obligation in Art. 11 f) of the Hague Protocol that can lead to the applicability of foreign maintenance law or data protection provisions as in Art. 62 Reg. (EC) No.° 4/2009.
- Limited possibilities to obtain a maintenance order in the state where the public body is based in terms of jurisdiction.
- No assistance of Central Authorities for applications for establishment of a maintenance order filed by public bodies and related special measures (debtor's location/determination of financial circumstances).
- Costs of cross-border proceedings

Tension between public maintenance support, refinancing needs and debtor protection

Fight against child poverty needs:

- Benefits that cover their financial needs
- Low granting conditions

Debtors need:

protection with regard to:

- Double recovery by child and public body
- Consideration of financial circumstances when reimbursing maintenance support

The more efficient the means of collection, the more “generous” the states can be when granting maintenance support.

States need:

- Good social measures to fight child poverty
- Efficient legal collection tools to guarantee the refinancing of benefits

Efficient means of collection can conflict with debtor protection

Proposals for a better consideration of the interests of public bodies in international law

❖ Short term perspective:

- Creation of a domestic place of jurisdiction for public bodies
- Increased support by Central Authorities regarding applications for establishment of a maintenance order and related special measures.
- Relaxation of data protection regulations to enable appropriate maintenance calculations (also in the interest of the debtor)
- Access to low-cost procedures or exemption from costs

❖ Long term perspective:

- Creation of a coherent “status of the public body as maintenance creditor”
 - Calculation of the reimbursement amount in accordance with the national law of the public body, not with the maintenance statute
 - Issuance of reimbursement decisions in the public body’s state of origin
 - Limitation of cross-border proceedings to the declaration of enforceability and enforcement
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Thank you for your attention!

Questions?

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