3.1 Attribution, Scope and Nature of Competence

The competence of the East African Community (EAC) as an intergovernmental organization is not stated expressis verbis in the Treaty for the Establishment of the East African Community (the Treaty). Unlike the EU where the powers of the supranational organization were clearly defined from the onset as to be distinguished from the competence of the Member States, in the EAC the situation is quite blurred.¹ In fact, the competence of the EAC can rather be implied from the objectives of the Community as broadly set in Article 5 of the Treaty.

According to Article 5(1), the objective of the Community is to “develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs, for their mutual benefit”. Obviously, this is a very broad objective that embraces all the imaginable aspects of Community life. However, the Community’s competence is limited to enhancing cooperation in specific areas that the Partner States agreed to undertake in common.² As far as these fields are concerned, it can be considered that a portion of competence has been conferred by the Partner States to the EAC, which is henceforth entitled to act within the limits of the powers conferred upon it.³ This includes making policies, enacting legislations, making regulations, issuing directives, taking decisions, making recommendations, or giving opinions to further the objectives of the community.

Pursuant to Article 8(1)(b) the Partner States have an obligation to work in close collaboration with the EAC institutions in the coordination of

¹ The author gratefully recognizes that paragraph 3.3, of this chapter was written by Professor K. Gastorn.
² See the clear listing under Art. 3 of the Treaty of Rome (1957) and its modification in subsequent EU Treaties, including the current Articles 4–6 TFEU. For a further overview see EU Chapter 3.
³ Art. 9(4) of the EAC Treaty.
their economic and other policies in order to achieve the objectives of the Community.\textsuperscript{4} This provision can be construed as enabling a kind of concurrent competence between the Partner States and EAC. Therefore, this means the conferred competence to the Community on some matters does not imply that the Partner States have automatically lost their authority to act on the same matters. Actually, the Partner States are entitled to continue making and applying their own policies and laws—even on matters under the competence of the EAC—as long as the latter has not yet made a common rule applicable to all of the Partner States. In other words, the competence of the Partner States ends where that of the Community start being exercised.\textsuperscript{5}

Looking at the EU competence typology,\textsuperscript{6} it can be inferred from various provisions that the EAC Treaty has consecrated a general regime of shared competence between the Community and the Partner States.

### 3.2 Main Competences of the EAC

The Treaty does not contain a single article that exhaustively lists the areas or powers that the Partner States intend to confer to the Community. The wording of the Treaty is rather very subtle and requires attention to find out whether a specific area of competence has been transferred to the EAC. In fact, Treaty provisions generally impose obligations directly on the Partner States in terms such as “the Partner States shall . . .” and “the Partner states agree . . .”, which confirms that the EAC is a Partner States-led organization in accordance with its intergovernmentalist integration approach. However, some paragraphs are inserted under those articles to legitimize the intervention of EAC institutions either by reserving to them a fair amount of latitude to determine the course of a certain action or by entrusting them with the power to act with immediate effect, with effect on a certain specified time or as soon as certain requirements are met.\textsuperscript{7} It has been suggested that whenever a provision contains such a paragraph, it should be construed as conferring competence to the Community.\textsuperscript{8}

\begin{itemize}
\item \textsuperscript{4} Art. 4(1)(b) of the EAC Treaty.
\item \textsuperscript{5} A.G. Toth, ‘The Principle of Subsidiarity in the Maastricht Treaty’, (1992) 29 Common Market Law Review 1079, p. 1080. Compare in this regard also the discussion in EU Chapter 3 on the nature of shared competences in the EU.
\item \textsuperscript{6} See Art. 2 of the Treaty on the Functioning of the European Union (TFEU).
\item \textsuperscript{7} See for instance arts. 75(2), (3) and (4); 76(2) and (3); 80(2); 84(1); 85; 86; etc.
\item \textsuperscript{8} A.G. Toth, op. cit., p. 1081.
\end{itemize}