



SØ- OG HANDELSRET TEN DOM

afsagt den 14. august 2026

Sag BS-25714/2025-SHR

Progress Software Corporation
(advokat Søren Christian Søborg Andersen
ved advokat Armin Sarvan (prøve))

mod

Region Syddanmark
(advokat Peter Lind Nielsen)

Denne afgørelse er truffet af dommer Felix Holten Fröhlich og de sagkyndige medlemmer Birgitte Svejstrup og Claus Thorsgaard.

Sagens baggrund og parternes påstande

Retten har modtaget sagen den 14. maj 2025.

Progress Software har nedlagt følgende påstand:

”Region Syddanmark skal betale Progress USD 595.750 med tillæg af procesrente fra den 1. marts 2024 af USD 550.000 og fra sagens anlæg af USD 45.750.

Påstanden nedlægges med sædvanlig subsidiær modifikation.”

Region Syddanmark har nedlagt følgende påstande:

”Frifindelse.

Subsidiært frifindelse mod betaling af et mindre beløb fastsat efter retens skøn"

Dommen indeholder ikke en fuldstændig sagsfremstilling, jf. retsplejelovens § 218 a.

Oplysningerne i sagen

Bilagsmaterialet i sagen

"2019-ændringen" og efterfølgende releases af Chef Infra m.v.

Der er fremlagt en række bilag vedrørende offentlig kommunikation af ændringer i 2019 med hensyn til den måde, hvorpå Chef Infra blev distribueret. Bl.a. fremgår af bilag benævnt *Choosing the Right Chef for Your Infrastructure: Enterprise vs. Community Explained*:

" ...

What is Enterprise Chef?

It is the commercial offering of the Chef software suite. This version builds upon the core functionalities of open-source Chef, including advanced features, timely support and enhanced capabilities. All of which are designed to meet the needs of larger organizations and complex infrastructures.

For example, Progress® Chef® Automate™ is a dashboard providing a unified automation platform that integrates infrastructure automation, compliance management and application deployment for an organization's entire IT environment. Progress® Chef® SaaS is a completely managed cloud-based solution for infrastructure, compliance and cloud security automation to manage your growing IT estate. Both Chef SaaS and Chef Automate are available only through enterprise distribution.

What is Community Chef?

It is the open-source, community version of the Chef software suite. Choosing the community route might be viable for those confident in managing Chef. Some of the features not available in this version of Chef include a GUI (graphical user interface), an analytics dashboard, a bulk grouping tool, customizable views, push functionality, and more.

The community edition of Chef is supported by an active user community on various popular platforms such as GitHub, Stack Overflow, and other popular Chef community sites. However, a reasonably higher level of expertise is still needed to provision, install, configure, and deploy a Chef server from scratch.

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Enterprise Vs Community Chef – A Comparison

Capabilities	Enterprise Chef	Community Chef
Supply chain integrity of distribution & SLOs	•	—
Public company standards for managing customer environment security risks and incidents	•	—
SLA-based Priority Incident Response and Security Fixes on CVEs (identification, notification, mitigation & resolution)	Available via different tiers of Service	—
Data Integrity and Cyber Resilience	•	—
Cyber Insurance & Indemnification handholding	•	—
Progress Security Operation Centre (SOC) support	•	—
Access to Chef Premium Content	•	—
24/7 Support	•	—
Professional Services	Available via different tiers of service	—
Priority Communications on Updates, Releases and New Features	Regular communications from all customer-facing teams	Communication with the community about new features and releases will not match the frequency for Enterprise Chef users
Access to Beta Releases	Prototype testing, feedback and driving product direction	—
Completely Managed Solution (SaaS)	•	—
HA Deployment Option	Available with Chef Automate and Chef SaaS	—
Dashboard with Insights *	•	—
Job Orchestration, Node Management	Enterprise users will have access to the entire feature set	Limited features will be available for community users
OS Support	Higher number of platforms and OS supported (fit for enterprises with strict guidelines on platforms)	Supports only eight platforms (Not meant for large enterprises)
First-Party Integration with Other Products from the Progress Portfolio	•	—
Premium Integrations: For example - ServiceNow	•	—
Future Capabilities	Access and facility to upgrade to the Progress® Chef® 360™ platform for all users	Limited visibility
Migration	Dedicated support for all customers	A community user can also migrate to the Chef 360 platform later
Training and Certifications	Potential discounts	No discounts

...”

Af bilag benævnt *Udskrift fra Progress hjemmeside vedrørende ændring af Progress' forretningsmodel* af 2. april 2019 fremgår bl.a.:

" ...

Introducing the New Chef: 100% Open, Always

Today, Chef is announcing meaningful changes to the way that we build and distribute our software. Chef has always believed in the power of open source. This philosophy is core to the way that we think about software innovation. There is no better way to build software than in the open in partnership with individuals and companies who use our stack in the real world. And for enterprises and other organizations facing complex challenges, Chef backs up our software by building and supporting distributions for our projects with the resources necessary for these organizations to succeed.

Going forward, we are doubling down on our commitment to OSS development as we extend our support for the needs of enterprise-class transformation. Starting today, we will expand the scope of our open source licensing to include 100% of our software under the Apache 2.0 license (consistent with our existing Chef Infra, Chef InSpec, and Chef Habitat license terms) without any restrictions on the use, distribution or monetization of our source code as long as our trademark policy is respected. We welcome anyone to use and extend our software for any purpose in alignment with the four essential freedoms of Free Software.

We aren't making this change lightly. Over the years we have experimented with and learned from a variety of different open source, community and commercial models, in search of the right balance. We believe that this change, and the way we have made it, best aligns the objectives of our communities with our own business objectives. Now we can focus all of our investment and energy on building the best possible products in the best possible way for our community without having to choose between what is "proprietary" and what is "in the commons." Most importantly, we can do that, with each of you, completely in the open. This means that all of the software that we produce will be created in public repos. It also means that we will open up more of our product development process to the public, including roadmaps, triage and other aspects of our product design and planning process.

We believe the best software is created by collaborating with the people who use it, so that it encapsulates the goals, expertise and innovations of the diverse Chef community.

Introducing Chef Enterprise Automation Stack

In addition to our commitment to community-based open source software development, Chef has also deepened our understanding of the needs of our enterprise customers. Enterprises demand a more curated and streamlined way to deploy and update our software and content. They want a relationship with us as the leading experts in DevOps, automation, and Chef products. And, beyond just technical innovations, these companies require assurance in the form of warranties, indemnifications, and support. To fulfill that need, Chef is announcing a new commercial distribution, Chef Enterprise Automation Stack, that will be licensed and tailored exclusively for commercial customers of Chef. We will make our distributions freely available for non-commercial use, experimentation, and individuals so anyone can get started with ease.

This new packaging and distribution approach is the culmination of several years worth of hard work and product development. Chef Enterprise Automation Stack is anchored by Chef Workstation, the quickest way to get a development environment up and running, and Chef Automate as the enterprise observability and management console for the system. Also included is Chef Infra (formerly just Chef) for infrastructure automation, Chef InSpec for security and compliance automation and Chef Habitat for application deployment and orchestration automation.

When you purchase a Chef subscription you get our commitment to be the best in the world at:

- Enterprise distribution: Tested, hardened software distributions proven in mission critical environments.
- Enterprise content and software updates: The fastest, most reliable way to get Chef products, updates and supported content. Your deployment will always be up to date with the latest Chef technology.
- Automation Expertise: Access to the leading experts in automation, DevOps and Chef products.
- Assurance & Support: Broad-based assurance in the form of 24×7 enterprise class support, warranty and indemnification.

We are committed and focused on being stewards of the Chef community, maintaining the community governance model, and maintaining

the upstream in a way that welcomes all who want to participate in it, however they choose.

What this means

To summarize the changes we are announcing today:

- Chef will move all of our product software development to an open source model with 100% of our product code available and licensed under Apache 2.0 to better align our business objectives with our community objectives.
- Chef will produce a new distribution (release), Chef Enterprise Automation Stack, built for commercial users with new terms and conditions of use.
- Chef will be the best in the world at delivering our enterprise distribution, content, updates, expertise, assurance, and support.
- Chef is committed to being the best steward of our open source community, welcoming anyone's participation, however they see it through our community-led governance model.

We understand that there will be more questions surrounding these announcements and have worked to answer as many as possible in these Frequently Asked Questions.

These changes mark an exciting moment in Chef's history and demonstrate how strongly we believe code is the mechanism for collaboration, trust, and velocity that will enable tomorrow's leading organizations. For us here at Chef, the future is very bright and we look forward to working with customers and our community to create the next generation of amazing, useful software.

Happy Automating!

Barry Crist CEO

..."

Af bilag benævnt *Publikation i Businesswire* vedrørende ændring af Progress' forretningsmodel af 2. april 2019 fremgår bl.a.:

" ...

Chef Open Sources 100 Percent of its Software under Apache 2.0 License, Introduces the Enterprise Automation Stack™

DevOps leader builds on record year with acceleration of community collaboration through code and introduces a new commercial distribution built completely from its open source software

...

SEATTLE--(BUSINESS WIRE)--Chef, the leader in DevOps, today announced a commitment to develop all of its software as open source under the Apache 2.0 license. The company also announced the introduction of a new commercial distribution, Chef Enterprise Automation Stack™, built from the same open source code, which it will develop, distribute, license, warrant, indemnify and support with its industry-leading automation and DevOps expertise. Chef welcomes any use of its open source projects for any purpose (in alignment with the four freedoms of FOSS) and welcomes future contributions. These new developments will streamline procurement, deployment and use of Chef products including Chef Infra (formerly Chef), Chef InSpec, Chef Habitat, Chef Automate and Chef Workstation.

..."

Af bilag benævnt *Frigivelsesnote (Release Note) for Chef Infra Client version 15.0.293* af 14. maj 2019 fremgår bl.a.:

"...

Chef Infra Client 15.0.293 Released!

...

Hey Everyone,

I'm happy to announce that today we released our first release of Chef Infra Client 15. This release includes a large number of new features and resources so be sure to check it out.

What's New

Chef Client is now Chef Infra Client

Chef Client has a new name, but don't worry it's the same Chef Client you've grown used to. You'll notice new branding throughout the application, help, and docs but the command line name of chefclient remains the same.

Chef EULA

Chef Infra Client now requires a EULA to be accepted by users before it can run. Users can accept the EULA in a variety of ways:

- `chef-client --chef-license accept`
- `chef-client --chef-license accept-no-persist`
- `CHEF_LICENSE="accept" chef-client`
- `CHEF_LICENSE="accept-no-persist" chef-client`

Finally, if users run `chef-client` without any of these options, they will receive an interactive prompt asking for license acceptance. If the license is accepted, a marker file will be written to the filesystem (unless `accept-no-persist` is specified). Once this marker file is persisted, users no longer need to set any of these flags.

See our FAQ for more information on the EULA and license acceptance.
..."

Af bilag benævnt *Frigivelsesnote (Release Note) for Chef Infra Server version 13.0.17* af 1. juli 2019 fremgår bl.a.:

" ...

Chef Server 13.0.17 is now available

...

Chef Server 13.0.17 is out and available on the downloads site.

Note: We released 13.0.16 earlier today, but there was a minor error in the habitat package release process and they weren't promoted alongside the omnibus package. This patch release will ensure both habitat packages and chef-server omnibus stable packages have the same version number.

...

Chef EULA:

Chef Infra Server requires an EULA to be accepted by users before it can be installed. Users can accept the EULA in a variety of ways:

- `chef-server-ctl reconfigure --chef-license accept`
- `chef-server-ctl reconfigure --chef-license accept-no-persist`
- `CHEF_LICENSE="accept" chef-server-ctl reconfigure`
- `CHEF_LICENSE="accept-no-persist" chef-server-ctl reconfigure`

Finally, if users run `chef-server-ctl reconfigure` without any of these options, they will receive an interactive prompt asking for license acceptance. If the license is accepted, a marker file will be written to the

filesystem unless accept-no-persist is specified. Once this marker file is persisted, users no longer need to set any of these flags.

See our Frequently Asked Questions document for more information on the EULA and license acceptance.

..."

Af bilag benævnt *Changes to the 'knife bootstrap' Command in Progress Chef* af 20. september 2024 fremgår bl.a.:

"...

Changes to the 'knife bootstrap' Command Licensing and New Download Journey

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As you might know, we have made changes to the Progress Chef download journey and updated the download APIs and scripts. With these changes, we hope to streamline the download journey and simplify the installation of Chef.

In this context, please be advised that starting with the October release, the knife bootstrap command will require a license key

...

While the community version of Chef doesn't require a license, the commercial and trial versions would mandate the usage of the license ID while executing knife bootstrap.

Setting Up Your License

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Upon running the knife bootstrap command now, you'll notice no warning messages.

These changes to the knife bootstrap command, including the requirement for a license key in commercial and trial versions, are set to be enforced with the release of Chef Workstation 24.10.

..."

Af bilag benævnt *Udskrift fra Progress hjemmeside med Chef Enterprise Subscription FAQ* af 4. november 2024 fremgår bl.a.:

“ ...

Chef Enterprise Subscription FAQ

The FAQ below is designed to answer the most common questions about the Chef enterprise subscription model. If you have more questions please feel free to contact Chef or visit our community Slack.

Q: Why did Chef change its business model?

In uenced by extensive customer feedback, we believe the best way to build software is to collaborate with the people who use software in the open. We also felt it was time to better align our business objectives more closely with our community objectives. Open sourcing 100% of our products enables us to focus on providing the most value to everyone while creating a clearer, simpler monetization model for our enterprise customers.

Q: How did Chef change its business model?

Beginning on April 2, 2019, we made all of our products open source under the Apache 2 license and began to attach commercial license terms to our software distribution (binaries). This is very similar to the “open source product” model most effectively run by Red Hat®, where they develop software in the open while attaching enterprise license terms to the distribution of RHEL (Red Hat® Enterprise Linux®).

This enables us to develop all of our products in the open with the community instead of being constrained to adding proprietary intellectual property on top of open source projects.

Users who want the fully supported, warranted, indemnified, highest-quality distribution of Chef’s products (Chef Infra, Chef InSpec, Chef Habitat, Chef Automate, Chef Workstation) and access to our industry leading automation and DevOps expertise have the ability to receive it by purchasing a commercial license to our distribution.

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Q: How will this impact existing customers?

For existing customers, this change will not impact their usage or contracts. Companies that already pay us for Chef Infra. Chef InSpec. Chef

Habitat and/or Chef Automate will continue to do so and we will continue to increase the value of their relationship with Chef.

Users who do not pay Chef today (use our free open source bmanes).andnet new users.have three options:

1. License our commercial software distribution.
2. Take our open source code and create a software development org to build and manage their own distro (create their own downstream fork) or leverage a public free distribution (which may or may not exist).
3. Stay on an older free distribution in perpetuity. For example, they could use Chef 14.7.17 forever but they would not receive security updates, bug fixes or support from Chef starting May 1, 2020.

We will make licensing accommodations for individuals and significant community contributors to continue to use Chef Infra, Chef InSpec and Chef Habitat in the same way that they have been. In addition, we want to make it equally easy to experiment and self-learn with our various products.

Finally, we have a low cost 'Essentials' suite of our commercial distributions that should satisfy the needs of smaller businesses.

...

Q: How has the license changed?

1. Source Code remains governed by the Apache 2.0 license. It is the same code and license that existed before April 2, 2019.
2. Binary is governed by the Chef commercial relationship or the Chef End User License which grants a limited license to individuals and some experimentation/educational uses for businesses.
3. Businesses who wish to deploy a Chef binary will need a commercial relationship with Chef.
4. All trademarks remain the property of Chef. Use of the source code and binary are always subject to the Chef

Trademark Policy.

...

Q: How are you enforcing the license?

All Chef's software is mission critical and runs in a variety of different use cases and environments. As a result, we have not implemented hard enforcement and we don't have any plans to change that. What we do have are commercial terms that we expect users of the software to honor. Users will have to accept the terms of the Chef End User License when they

first run our software. Once the license acceptance has been acknowledged, acceptance can be automated to avoid the need for user input for further deployments

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Af bilag benævnt *Screenshots fra Progress egen hjemmeside – download siden fremgår bl.a. følgende*, der efter det oplyste er offentliggjort i februar 2026:

"...

Chef Infra Client 19.1.164 Released!

cwolfe Chef Software Staff

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We are delighted to announce the availability of version 19.1.164 of Chef Infra Client.

Key features

- Chef Infra Client 19 is the long-term support (LTS) version.
- Chef Infra Client 19 is built entirely on Chef Habitat. We aren't providing traditional Omnibus builds.
- Chef Infra Client 19 uses standard licensing for commercial, community, and trial customers.
- You can use Chef Infra Client Legacy Migration to upgrade nodes running Chef Infra Client 17 or 18 to Infra Client 19. This supports side-by-side installations of Chef Infra Client.

...

Known issues

- This release doesn't support FIPS Mode.
- The chef_client_systemd_timer resource doesn't work with SELinux.

Get the Build

Visit [the Chef Downloads Portal](#) to obtain the latest release, and then use the [Install Docs](#) to get started managing your infrastructure.**

**

You'll need a license key to download Chef Infra Client 19 using automated tooling, such as `mixlib-install`. To begin your journey with enhanced support, a complete ecosystem, and access to premium content, contact your [Progress sales representative](#) for a commercial license. To obtain a limited-capability free or trial license key for Chef Infra Client, use the [Free/Trial License Form](#).

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Korrespondance mellem parterne

Region Syddanmarks forespørgsel i 2022:

Af bilag benævnt *E-mailudveksling mellem Collin J Hodgson fra Progress og Henrik Paulsen fra Regionen* fremgår bl.a.:

" ...

From: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>
 Sent: Friday, August 26, 2022 11:40 AM
 To: Collin Hodgson <Collin.Hodgson@progress.com>
 Cc: kate.garrett@qbssoftware.com; Preeti Kumari <Preeti.Kumari2@progress.com>; Peter Parsons <Peter.Parsons@progress.com>
 Subject: Re: Chef Infra Enterprise

Hey Collin, I can already say that's way too much for us. That much money each year are never going to get founding.

Venlig hilsen

Henrik Paulsen IT Specialist Infrastruktur

On 26 Aug 2022, at 11.03, Collin Hodgson <Collin.Hodgson@progress.com> wrote:

Dear Henrik

Thank you for your time this morning.

I have pleasure in attaching slides explaining the features of moving to a commercial based licence.

Our licence model is an annual subscription-based model, including support.

As you mentioned that you would not be looking to start any commercial licence until 2023, I am able to offer you an outline potential licence cost,

We are more than happy to arrange a technical call where we can demonstrate the latest version of our solution and also explain product roadmaps

I look forward to hearing from you

Regards

Collin J Hodgson

Sales Director - EMEA

Chef Software

collin.hodgson@progress.com chodgson@chef.io

+44 (0) 7546 81 93 34

...

From: Kate Garrett <kate.garrett@qbssoftware.com> on behalf of QBS Managed Accounts <Managed.Accounts@qbssoftware.com>

Date: Friday, 12 August 2022 at 11:26

To: Preeti Kumari <Preeti.Kumari2@progress.com>

Cc: Collin Hodgson <Collin.Hodgson@progress.com>

Subject: RE: Chef Infra Enterprise

Hi Preeti,

Please find below feedback from customer, please advise if this is enough or which further information is required?

"We use the community edition today. We currently have around 3.000 servers running with a Chef client. Both physical and VMs. So we have a the setup running, but if not too much money we would like the enterprise features as well"

Many Thanks,

Kate

.<qbs-software- Kate Garrett

...

Account manager

...

From: Collin Hodgson <Collin.Hodgson@progress.com> Date: Monday, 8 August 2022 at 10:18 PM

To: QBS Managed Accounts <Managed.Accounts@qbssoftware.com>

Cc: Preeti Kumari <Preeti.Kumari2@progress.com>

Subject: Re: Chef Infra Enterprise

Hi Kate

Thank you for the clarification

I just need to know how many VM's / nodes that the software needs deploying on and also when they would envisage starting to use the licences

Thank you

Kind regards

Coll Hodgson

Sales Director EMEA Chef Software

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On 8 Aug 2022, at 17:20, QBS Managed Accounts <Managed.Accounts@qbssoftware.com> wrote:

Hi Collin,

This is a new enquiry. End customer is GOV:

Region Syddanmark

Regionshuset Damhaven 12

7100 Vejle Danmark

The information I have given is all I have been provided with. Is there anything else you need to know to be able to provide a quote?

Many Thanks, Kate

..

From: Preeti Kumari <Preeti.Kumari2@progress.com>
Date: Monday, 8 August 2022 at 13:05
To: kate.garrett@qbssoftware.com <kate.garrett@qbssoftware.com>
Cc: Collin Hodgson <Collin.Hodgson@progress.com>
Subject: Re: Chef Infra Enterprise

Hi Kate , Glad to e-meet you .

I am Preeti Kumari taking care of Demand Gen/Sales – EMEA Region for CHEF Product .

Can we get on a quick 15 minutes call to understand the requirements in detail . I would need few more information for providing you with the quote.

Meanwhile, I am also looping in my colleague Collin Hodgson (EMEA Sales Director) for providing his inputs.

Response Awaited .

Regards, Preeti Kumar

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From: Kate Garrett <kate.garrett@qbssoftware.com>
Sent: Thursday, August 4, 2022 9:49 am
To: Philip Dunlop <pdunlop@progress.com>
Cc: QBS Managed Accounts <Managed.Accounts@qbssoftware.com>
Subject: Chef Infra Enterprise

Hi team,

Please can you supply us with a quote for the following product: 1x Chef Infra Enterprise

<https://www.chef.io/products/chef-infra>

End customer is located in Denmark.

Many Thanks, Kate

..."

Korrespondance i 2024 og derefter:

Af bilag benævnt *E-mailudveksling mellem Niklas Enge fra Progress og Henrik Paulsen fra Regionen* fremgår bl.a.:

" ...

From: Niklas Enge <Niklas.Enge@progress.com>
Date: Thursday, 11 January 2024 at 15.42
To: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>
Subject: RE: Chef Infra Enterprise

Hi Henrik Thanks for the quick feedback.

So just to confirm, the latest versions of Chef Infra are 15 for the Server and 18 for the Client. Are these the ones you use (it is quite common to update the Client more often so just wanted to make sure). Do you also use Chef Automate or Chef Backend in any way for reporting etc?
Thanks /Niklas

From: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>
Sent: Thursday, January 11, 2024 3:31 PM
To: Niklas Enge <Niklas.Enge@progress.com>
Subject: Re: Chef Infra Enterprise

Hey Niklas, We're using Chef infra, and latest version.

We support RedHat, Ubuntu, Rocky, Windows 2012, Windows 2016, Windows 2019 and Windows 2022. Those are 99% of our server. The split between Windows and Linux Is 80% Windows, and 20% Linux.

I think a fair licens would be around \$30k-\$50k for a site licens. If the Enterprise features would give us any value

I think the Open Edge client that CGI uses for their solution it auto updated or updated/install with Microsoft SCCM. The codebase in the solution is from the 90s. CGI is not on a level where automating stuff with Chef is even possible. They have a lot of work to do before that.

Venlig hilsen

Henrik Paulsen IT Specialist Infrastruktur

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From: Niklas Enge <Niklas.Enge@progress.com>
Date: Wednesday, 10 January 2024 at 11.38
To: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>
Subject: RE: Chef Infra Enterprise

Hi Henrik

Thanks for the response. I totally understand your concerns regarding the price, and I know that there is always a heavy cost reduction pressure in the health care sector. I can't promise anything, but I am certainly willing to see what can be done with regards to a feasible commercial solution to best support you. Can you give some details about what versions you are using today? I understand that you are using only Chef Infra, correct? Which version of Server and Client do you have deployed today? Which Windows and Linux version are you supporting and what is the approximate split Windows/Linux? You say that you do not need the enterprise features of the product, so I guess what you value is access to support, updates and security fixes? Do you also have some estimation of what you would approximately consider a fair price for you use case? I understand this is not entirely your decision, but it would be good to have some kind of understanding of the budget available for such a solution.

...

Thanks, and looking forward to your feedback! /Niklas

From: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>
Sent: Wednesday, January 10, 2024 8:53 AM
To: Niklas Enge <Niklas.Enge@progress.com>
Subject: Re: Chef Infra Enterprise

Hey Niklas,

I also work with CGI on their Progress solutions. I don't code in or install CGI's Progress solution, but I help manage the system. Jesper Dahl left the company a few years ago. We use Chef to manage around 3.000 Windows and Linux servers. Settings, 3. Party agents and deployment. If the price hike to the paid version is so high, then we will continue to use the free version. We just can't justify the expense. We do not need the enterprise features. If you remove the community edition we will move to another product. If you could create a site license instead of per installed agent, and create a fair price, then we could perhaps justify the price.

Venlig hilsen

Henrik Paulsen IT Specialist Infrastruktur

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From: Niklas Enge <Niklas.Enge@progress.com>

Date: Tuesday, 2 January 2024 at 16.10

To: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>

Subject: RE: Chef Infra Enterprise

Hi Henrik Sorry,

it was not my intention to be rude by assuming you understand Swedish, I am just used to use a "Nordic" communication even if I have to admit my Danish is not great either. Happy to switch to English. I just wanted to introduce myself as the main contact in the Nordics for Progress, and therefore also Chef (that we acquired in 2020). As you might now we also work with Region Syddanmark in other areas related to systems provided by CGI that uses Progress software extensively. I worked a bit with Jesper Dahl a few year ago, but I believe he has left Region Syd?

With regards to Chef: Collin used to work in my team, but he has now left Progress so I wanted to make sure you have my contact details moving forward. I understand that you use a community version of Chef, and that price is the main reason you do not move to Enterprise. Regardless of this I am very interested to learn more about your use case, what parts (and versions) of Chef you use today? Also what your plans are moving forward and key aspects that you would be looking for in an enterprise contract. I understand that in security and compliance are critical in your business, but I am sure there are other areas that are important to you as well. Maybe we can find a workable solution somehow. Do you have time for a quick call sometime during January, just to say hi and have a quick update?

Best regards /Niklas

From: Henrik Paulsen <Henrik.Paulsen@rsyd.dk>

Sent: Tuesday, January 2, 2024 3:37 PM

To: Niklas Enge Niklas.Enge@progress.com

Subject: Re: Chef Infra Enterprise

Hey Nicklas,

Sorry, but I can't read Swedish so I don't understand what you're trying to say.

The main reason that we use the community edition. The BNP price hike from free to paid. Sendt fra min iPhone

Den 2. jan. 2024 kl. 15.17 skrev Niklas Enge <Niklas.Enge@progress.com>:

Hej Henrik, och Godt Nytt År!

Jag heter Niklas Enge och är ansvarig för Progress (och därmed också Chef) verksamhet i Norden. Collin Hodgson arbetade i mitt team och jag vet att ni hade kontakt för något år sedan (se nedan email).

Tyvärr har Collin lämnat Progress/Chef, och jag vill bara höra av mig för att lämna mina kontaktuppgifter direkt till dig. Som du kanske vet arbetar vi på Progress mot Region Syddanmark också på andra områden, både direkt och via CGI som har system utvecklade på Progress plattformar.

Vad jag förstår använder ni Chef från en äldre, OSS-version? Jag vill gärna veta lite mer om hur ni använder Chef och hur planerna ser ut framåt. Har du tid nu i Januari för ett kort call, annars kommer jag också gärna förbi och hälsar på nästa gång jag är i Danmark.

Mvh /Niklas
Niklas Enge
..."

Af bilag benævnt E-mail og vedhæftet brev dateret 18. januar 2024 fra Progress til Regionen fremgår bl.a.:

" ...

VIA EMAIL:

Region Syddanmark
Regionshuset
Damhaven 12
Denmark, 7100

RE: Notification of Non-Compliance

Dear All,

Progress Software has been made aware that currently your organization is utilizing commercial version of Chef Infra. To be more specific Chef Infra server version 15 and Chef Infra Client version 18, both are commercial versions.

We have done an internal investigation, but we cannot find any agreement between Region Syddanmark and Progress for the use of our Chef products related to those specific versions. This effectively means that Region Syddanmark is using our products without our authorization and therefore is in breach of our intellectual property rights.

As a next step we would like to discuss this matter with you and agree on the next steps and actions to address and resolve the compliance issue. Please ensure that you contact the undersigned no later than January 26, 2024, to set up a call, to discuss the compliance matter and agree on next steps and actions towards resolution.

Thank you for your prompt attention and we look forward to discussing this matter further with you.

Sincerely

Maria Trigonis
WW Director Software Asset Management
..."

Af bilag benævnt *E-mailudveksling mellem repræsentanter fra Regionen og repræsentanter fra Progress* fremgår bl.a.:

" ...

Hi Niklas,

Yes, our chef-solo setup is what we use to build our chef server (prap-pchefsrv01v).

No, that is not included in the 2382, that number is the output of "knife node list | wc -l".

So I guess its 2383, all in all ?

/Martin

On 23 Jan 2024, at 10.49, Niklas Enge <Niklas.Enge@progress.com> wrote:

Hi Henrik

Thanks for this. We will have a look and come back.

One additional question: you mentioned you had a separate Chef Solo setup. I guess those machines are not included in the 2382 nodes listed below?

Best regards /Niklas

From: Henrik Lasota Gregersen <Henrik.Lasota.Gregersen@rsyd.dk>
Sent: Tuesday, January 23, 2024 8:16 AM
To: Maria Trigonis <mtrigoni@progress.com>; Peter Parsons <Peter.Parsons@progress.com>; Niklas Enge <Niklas.Enge@progress.com>; Martin Køhrsen <Martin.Kohrsen@rsyd.dk> Subject: SV: Chef Licensing

Hi everybody,

So Martin made the extraction from Chef server and here is his findings:

Number of current nodes (changes every day):
- 2382

Number of chef servers (npappchef01v, prappchefsrv01v):
- 2

Some of these nodes are still running older versions of chef client, because the OS is not compliant with newer versions of chef client.

Through the years, the more we go back, the more of these nodes has not run chef client 15 or higher.

We can't say, when we upgraded the chef server, at that time - because we build a new chef-solo setup in 2022.

We can say, when our Chef-solo build is from - April 2022.

If any questions feel free to get back to us.

Venlig hilsen

Henrik Lasota Gregersen

Funktionschef

Infrastruktur

Regional IT - Resultater gennem samarbejde

...

..."

Af bilag benævnt *E-mailudveksling mellem Niklas Enge fra Progress og Henrik L. Gregersen fra Regionen* af 31. januar 2024 fremgår bl.a.:

"...

Hi Niklas and Maria,

We need to postpone the meeting tomorrow, because we need to involve our contract and license teams. Meanwhile I have some notes on the below:

1) The server was apparently installed in April 2022, but I think to recall, that we used a lot of time migrating cookbooks from version 12 and therefore we did not have clients on that server until late 2022 to my understanding. In your calculation you charge us for the full amount of nodes straight from april 2022.

2) When and where did you communicate the change in licensing? I think it is a difficult situation when suddenly charging a former open-source binary – just because of a version update. So I am curious how you communicated that change?

I will get back to you with a new date proposal.

Venlig hilsen / Regards

Henrik Lasota Gregersen

...

Fra: Niklas Enge <Niklas.Enge@progress.com>

Sendt: 31. januar 2024 14:22

Til: Henrik Lasota Gregersen <Henrik.Lasota.Gregersen@rsyd.dk>

Cc: Maria Trigonis <mtrigoni@progress.com>

Emne: Chef Licensing- Region SydDanmark

Hi Henrik

Thanks for your patience, we have now reviewed the information you provided and had some internal discussions reg options.

You have confirmed that you are in breach of our license agreement, and that this has been the case since at least April 2022 when the new server environment was built using Infra Server v15. From what we understand a commercial version of Chef could have been deployed even before this date since you have been following the Chef upgrades, and the previous versions of Infra Server (13 and 14) were also commercial releases. This means that potentially an unlicensed version could have been deployed already as early as May 2019.

Your deployment of 2383 nodes requires a valid license of the Chef Infrastructure Management product (including both Chef Infra Server and Chef Infra Client). We license this product as an annual subscription including licenses, maintenance, premium level technical support and access to dedicated resources from our Customer Success and Customer Architect teams. The licensing model has been presented in previous contact with Region SydDanmark, latest in call in August 2022. You mention that the node count can vary a bit from day to day. Our license rules requires that our contract covers a sufficient amount of nodes to cover the top use during the license terms. In our calculations we have assumed that usage of nodes has not been higher than today during the period going back to April 2022, even if levels of 3000-4000 nodes has been mentioned in previous discussions

Based on the above, your current deployment would be covered by a 2400 node Subscription of Chef Infrastructure Management at a price of

This would mean that what is needed to cover current use+ previously unlicensed use (at a minimum) would be:

...

Looking forward to your feedback and discussing next steps on our call on the 7 February. If you have any questions in the meantime, feel free to reach out.

Best regards /Niklas

Niklas Enge
Senior Manager, Sales Infrastructure Solutions
..."

Af bilag benævnt *E-mailudveksling mellem Niklas Enge og Maria Trigoni fra Progress og Margretha J. Magnusardóttir fra Regionen* fra perioden 9. februar 2024 – 28. februar 2024 fremgår bl.a.:

"...

Hi Margetha,

Apologies for the delay in responding, please see my answers below:

Please provide us with the EULA, that you can document has been accepted by Region Syddanmark. – PROGRESS- In my prior communication I provided you with the process of accepting the EULA but also how Region SydDanmark can check that the EULA has been accepted upon downloading the corresponding versions. Please see document once more attached. Accepting the EULA electronically is standard practice in the software industry. As already mentioned in my prior email if you have not accepted the EULA terms, the execution of the download would have failed, therefore your organization would have had to continue to use the old free versions, which is not the case. Progress is very clear on this point, Region SydDanmark has admitted in writing (from various Region SydDanmark personnel) that you are using specified commercial versions, without our authorization and without having a valid license.

We are also still missing the log file documentation, please see e-mail of Feb. 22. – nd PROGRESS – Again, you can obtain these logfiles from your own systems if you require them. We see no need for inspecting more logfiles since we have your admission of using commercial version, including the dates that you have start using them. This admission is provided by different Region SydDanmark personnel, some of them

in managerial positions. Progress strongly believes that the points raised in relation to the EULA and the request for the log files are simply distractions to delay the full process.

As we informed you on February 12 2024, Region Syddanmark made plans to move away from your open source software, and by now we have moved away from this software. You should therefore not expect that we are static on this. -PROGRESSAs already explained the versions you have confirmed that you have installed and used are not free to use versions (15 for Chef Infra Server, and version 18 for Chef Infra Client), they are commercial version used without our authorization and therefore infringing our intellectual property rights. For this reason, I emphasize once more, that we expect the environment to remain static until the matter is settled.

I would also like to stress the fact, that asking for a quotation on the commercial license back in 2022, does not constitute an agreement between the parties to move over to a Commercial License. - -PROGRESS- Our position is very clear, while Region SydDanmark rejected the commercial offer back in 2022, you ignored our intellectual property rights and installed the commercial versions anyway.

Progress is not willing to prolong the discussion on points that have been already addressed in the face of Region SydDanmark's long-standing (and ongoing) non-compliance. Region SydDanmark has two options: either enter commercial discussion to resolve the compliance issue or we will escalate the case to our Legal group to get the resolution that it deserves.

Please respond no later than Friday 8th of March 2024 on how you would like to proceed.

Kind regards

Maria

...

Fra: Maria Trigonis <mtrigoni@progress.com> Sendt: 22. februar 2024 14:02

Til: IT Contract management <It.Contract.Management@rsyd.dk>

Cc: Henrik Lasota Gregersen <Henrik.Lasota.Gregersen@rsyd.dk>;

Maria Trigonis <mtrigoni@progress.com>; Niklas Enge

<Niklas.Enge@progress.com>

Emne: RE: Chef Licensing- Region SydDanmark

Hi Margretha,

My name is Maria, and I am responsible for the compliance program at Progress.

I would like to provide you with our comments/additional information in relation to the points you raise below:

- * We need to see log file documentation for the fact, that we at Region Syddanmark have accepted the End User License Agreement, you refer to.
- * We also ask that you provide us with any other log-files regarding this matter, if you should have any.
{Progress} - Attached please find a document on how the EULA acceptance process works. It also includes information on how you can locate logged information that the EULA has been accepted under "License File Persistence" section. Please be aware that if our customers do not accept the prompt for the EULA T&C then the execution will fail, and the software will not run. In the case of Region Syddanmark it has been confirmed by your personnel that you are using version 15 for Chef Infra Server, and version 18 for Chef Infra Client through email on January 11, 2024.
- * We need to see the End User License Agreement, where it must be stated which choice of law we have, which rule of law applies and other specific legal questions, we need to have answered. If you can't present the EULA, please provide us with the Agreement, that has been made between the parties. {Progress} – Attached you will find the EULA.
- * We need to see either links to the press releases or articles, you have published about the matter at hand. Also we need to know, where these have been posted and when.
- * Also, we need to see documentation for how you have informed Region Syddanmark of this change in licensing – for this we need to see a copy of the relevant e-mail or e-mail correspondence.
{Progress} – Please find a few links below. As Niklas mentioned during April 2019 Chef communicated the business model change through var-

ious channel. Registered paying customer where also informed directly.
 Blog by Barry Crist, the CEO

<https://www.chef.io/blog/chef-software-announces-the-enterprise-automation-stack>

FAQ on the change:

<https://www.chef.io/pricing/subscription-model-faq>

Post on discourse (the primary platform for the community communication)

<https://discourse.chef.io/t/chef-is-open-sourcing-100-of-our-product-code/14875>

Link to the press release that we sent out, it is published here (and on many other sites):

<https://www.businesswire.com/news/home/20190402005257/en/Chef-Open-Sources-100-Percent-SoftwareApache>

Leaving aside the various ways that the change was communicated already in 2019, specifically for Region Syddanmark, in a call on 26th August 2022 we presented your organization with what this change would mean if Region Syddanmark decided to move to a commercial version. Participants were Henrik Paulsen from Region Syddanmark, Collin Hodgson from Progress and Peter Parsons from Progress. In an email follow up after the meeting, we provided you with a copy of the presentation together with pricing for 4000 VM/nodes. Region Syddanmark's feedback on the same day, was that pricing was very high and therefore there was no interest .

Based on the presentation and email communication between the parties Region Syddanmark had a very clear understanding of what it would mean to move to a commercial version. During January 23, 2024 your organization confirmed through email, that you have been using a commercial version since at least April 2022. Progress considers that even though dedicated Region Syddanmark personnel was made aware of the changes in August 2022 , they continued using our software, without having a commercial license or Progress's authorization and therefore infringing our software.

In our communication we have been very transparent, we appreciate that Region Syddanmark needs to do their own due diligence, but the fact remains that your organization ignored the contractual obligations for running a commercial version and this constitutes a violation of our intellectual property rights.

Finally, Progress expects that Region Syddanmark will take proper and appropriate steps to ensure that relevant documents, including elec-

tronic documents and product files, are not altered, lost, destroyed or disposed. The Region Syddanmark environment should remain static, you should not down grade from the existing versions 15 for Chef Infra Server, and version 18 for Chef Infra Client until the case is settled.

Progress would like to discuss settlement and payment of the matter by no later than February 29, 2024, in order to avoid any further escalation.

Thank you in advance for your cooperation to this matter.

Kind regards
Maria Trigoni
...

From: IT Contract management <It.Contract.Management@rsyd.dk>
Sent: Monday, February 19, 2024 12:43 PM
To: Niklas Enge <Niklas.Enge@progress.com>
Cc: Maria Trigoni <mtrigoni@progress.com>; Henrik Lasota Gregersen <Henrik.Lasota.Gregersen@rsyd.dk>
Subject: SV: Chef Licensing- Region SydDanmark

To Niklas

We have discussed your e-mail internally today, and before we can reach some sort of understanding, we need more information and documentation from you:

We need to see log file documentation for the fact, that we at Region Syddanmark have accepted the End User License Agreement, you refer to.

We also ask that you provide us with any other log-files regarding this matter, if you should have any.

We need to see the End User License Agreement, where is must be stated which choice of law we have, which rule of law applies and other specific legal questions, we need to have answered. If you can't present the EULA, please provide us with the Agreement, that has been made between the parties.

We need to see either links to the press releases or articles, you have published about the matter at hand. Also we need to know, where these have been posted and when.

Also, we need to see documentation for how you have informed Region Syddanmark of this change in licensing – for this we need to see a copy of the relevant e-mail or e-mail correspondence.

Thank you in advance.

Venlig hilsen

Margretha J. Magnusardóttir IT-kontraktjurist

Planlægning og Styring - Styring

Regional IT - Resultater gennem samarbejde

...

Fra: Niklas Enge <Niklas.Enge@progress.com>

Sendt: 12. februar 2024 16:14

Til: Margretha Jóhanna Magnusardóttir <Mjm@rsyd.dk>

Cc: Maria Trigonis <mtrigoni@progress.com>; IT Contract management

<It.Contract.Management@rsyd.dk>; Henrik Lasota Gregersen <Henrik.Lasota.Gregersen@rsyd.dk>

Emne: Re: Chef Licensing- Region SydDanmark

Hi Margretha

...

If we look at the history, I would first like to explain that the change in business model and licensing has nothing to do with Progress acquisition of Chef. Even if this is completely irrelevant in regards to this discussion, this decision was made by Chef on the 2nd April 2019, over one year before Progress made the acquisition. Not sure why you bring this up, but wanted to get the facts right here.

Secondly you talk about open source software, and somehow imply that our licensing somehow violates the principles of open source and that this is somehow affecting your decision to move away from Chef. Just to be clear on this: Chef is 100% open source, and we are active supporters and proponents of open source. This has not changed with the change announced in 2019, in fact one of the major changes was that ALL Chef source code was made available under open source Apache 2 licensing, something that was not the case before. However, open source does not mean that you can freely use any distribution and version of this software without paying for it. Even the concept of “free software”, as defined by the four freedoms of FOSS, does not imply that the software can be used free of charge(gratis). Free in this context means “libre”, and these two meaning of the term are often confused.

This brings us back to more relevant fact in this case:

* The change in business model and licensing was announced on the 2 April 2019, almost five years ago. At that time nd Chef issued press releases about this, send email to all customers and known open source users announcing this, held webinars on the subject and published blog post and articles. This was also heavily covered in the press, also in Denmark. Known larger users of Chef was briefed directly, regardless of if they were paying customer or not. This was definitely not something than anyone tried to hide, and it is not very likely that no one in Region SydDanmark, being an active member of the Chef community, picked up this message.

* The business model change meant that Chef was made available as open source code. Anyone can, and many have, used the code to build their own deployment of Chef. This is perfectly fine and these can be freely used (following the FOSS principles). Any binary published before this date that was available for use without cost were also not affected, there was no change. All binaries and distributions made by Chef (and later Progress) after this point are however published under a commercial EULA that requires a commercial relation with Chef, meaning you have to pay to use this. This is the case for all versions of Chef Infra Client v15 and above, and all version of Chef Infra Server v13 and above.

* To install any of these binaries/executables you will have to accept the EULA, which clearly states that you can't use the software for commercial purposes without a valid license. As I am sure you agree, this is standard practice in the software industry and nothing specific to Chef. Accepting the EULA and using the software without a valid license clearly means that you have breached the license agreement.

* Region SydDanmark has admitted that you have installed, and are actively using, Chef Infra Server version 15 and Chef Infra Client version 18. These can't be installed without accepting the EULA, meaning you have accepted these terms. This means that Region SydDanmark is clearly breaching the license agreement, in contrast to what you now claim not to want to confirm.

* You say that you have used the “open source as the free tool it was”. As explained above, this is clearly not the case. You have been using commercial distribution governed by a EULA that you have accepted.

* Your claim that you have not been informed about the licensing rules is also not correct. Henrik Paulsen from Region SydDanmark reached out to Progress (through a partner) to ask for pricing for a planned move to commercial distributions of Chef in 2022. On a call the 26th August 2019, between Henrik and several people from Progress Chef, the licensing model was discussed and explained. As a follow up to the call pricing for commercial license was outlined, and a presentation was shared that presents the value of the commercial license subscriptions we offer. This clearly states that without this subscription you only have access to the source code of the Chef products. It also makes clear what is required to create your own distribution from this open source code, something you have clearly not done. The offer was later rejected by you, even if you by own admission at this point had already deployed an unlicensed distribution of Chef.

* You also claim that you have informed us of your version number and that we have not informed you about what the correct licensing should be. That is not correct. In the call in August 2022 no commercially licensed version numbers were discussed. I received information from Henrik Paulsen about your use of commercial version in January 2024, at which point we promptly reached out to you to discuss this matter.

* We maintain our position that Region SydDanmark has been using Progress Chef software without a valid license AT LEAST since April 2022. In the latest call you stated that you have been continuously trying to stay on the latest versions of the software. Since there are several commercial versions released between 2019 and the versions you deployed in 2022, this indicates that you have had commercial deployments of Chef software even before April 2022. Our suggested commercial resolution to the situation was made to seek an amicable solution to the situation. This does not mean that we have accepted that violation of the license terms have not occurred before this time, and we reserve the right to claim compensation for all such unlicensed use until this matter has been fully resolved.

In summary, regardless if you decide to discontinue your use of Progress Chef after February 2024, we maintain our position that Region SydDanmark has breached the EULA and used Progress Chef products without a valid license for a long time, and we seek compensation for this use.

Again, we treat this as a matter of urgency, and ask for your response latest Thursday this week. We are available for a call to discuss, please let us know when would work best for you and we will set up a call.

Best regards

/Niklas
Niklas Enge
Senior Manager, Sales

...

From: IT Contract management <It.Contract.Management@rsyd.dk>
Sent: Friday, February 9, 2024 12:11 PM
To: Niklas Enge <Niklas.Enge@progress.com>
Cc: Henrik Lasota Gregersen <Henrik.Lasota.Gregersen@rsyd.dk>
Subject: VS: Chef Licensing- Region SydDanmark

To Niklas Enge / Progress Chef

First, let me introduce myself: I am Henriks colleague and work in the Contract Management Team at Regional IT, Region Syddanmark.

After using your open source for free, you have now suggested that Region Syddanmark is to pay the following:

I would like to stress, that we at Region Syddanmark have not confirmed that we have breached the license agreement, as you have claimed in your e-mail of 31 of January 2024. We have informed you of

our version number, and have in that regard not been made aware by you, that the new version is licensed differently than the open source. The change in licensing has not been clearly communicated to Region Syddanmark, and we have therefore continued to use the open source as a free tool. The fact that Chef has been acquired by Progress does not grant you a right to change the licensing, and does not authorize such backward pricing (back to 2022).

Going forward, we are now moving away from this tool, as your suggested licensing and pricing conflicts with the whole concept of open source. We will be out by the end of February 2024.

Just to make our point clear – we have used the open source as the free tool it was, and we have not agreed to the change in licensing. We therefore reject your claim of the backcharge and we do not wish to go forward with ProgressChef.

Venlig hilsen

Margretha J. Magnusardóttir IT-kontraktjurist
Planlægning og Styring - Styring

..."

Af bilag benævnt *E-mail fra Bech-Bruun til Accura af 4. december 2024* fremgår bl.a.:

" ...

Kære Søren

Jeg repræsenterer Region Syddanmark (Regionen) i ovennævnte sag, hvor du på vegne af Progress Software Corporation (Progress) har gjort et større krav gældende overfor Region Syddanmark på baggrund af en påstået licenskrænkelser. Jeg har gennemgået udkast til stævning og de fremsendte bilag.

Regionen har under hele forløbet – fra første installation og anvendelse af Chef Infra softwaren i tidligere versioner til henvendelsen fra Progress i starten af januar 2024 handlet i god tro, og efter den klare opfattelse, at man har benyttet Chef Infra softwaren på open source vilkår i form af Apache licensen. Chef Infra softwaren har siden start ligget til fri download på Chef projektets GitHub konto, hvor Regionen løbende har hentet softwaren fra. Den har altid været tilgængelig under open source licensvilkårene Apache 2.0

...

Regionen har altid downloadet og installeret Chef Infra softwaren fra GitHub og har, jf. bilag A (ekstrakt fra mail fra en af Regionens medarbejdere) igen nu forsøgt at downloade og installere Chef Infra softwaren alene med de komponenter som Progress selv har gjort tilgængelig på GitHub (fx mixlib-install), for bl.a. at se om skulle have overset noget i processen. Det viser sig dog ret tydeligt, at det er muligt at downloade og installere softwaren uden, at der bliver stillet krav om aktivt at skulle acceptere andre licenser, indtastning af licensnøgler eller krav om betaling, og hvor den eneste licens tekst, man bliver præsenteret for, er Apache 2.0, som også er den, der anføres som licens for alt indhold på Progress' GitHub platform (ude i højre side) se Bilag B. Det er i klar modsætning til det Progress hævder.

...

På baggrund af ovenstående kan det konkluderes, at Regionen under hele forløbet i god tro har downloadet og anvendt Chef Infra softwaren efter den klare og begrundede overbevisning om, at man fortsat anvendte open source – Apache 2 – licenseret software, uden at skulle betale licens eller i øvrigt være begrænset i anvendelsen heraf, jf. såvel licensen som The Open Source Definition fra The Open Source Initiative. Der vil derfor ikke ske betaling af det rejste krav.

Med venlig hilsen

Bech·Bruun

Peter Lind Nielsen

...

Interne Change Requests og undersøgelser i Region Syddanmark i 2025

Af bilag benævnt *Change Request CHG0110223 installation af CINC* af 12. februar 2024 fremgår bl.a.:

”

...

Report Title: Change Request Details
Run Date and Time: 18-06-2025 07:45:19 Central European Summer Time
Run by: Anders Bigum
Table name: change_request

...

Impact justification:

chef klienten skal fjernes da vi bryder licensen RITM0667827

...

General

Description:

Da ci skal ud af Chef (<https://docs.chef.io/server/>), skifter vi til Cinc - som er den samme binary som Chef, bare gratis. For at være sikker på, at vi ikke sår "grena" af os selv - installerer vi cinc agenten på alle servere. Det betyder at alle servere, i en kort periode, kommer til at køre både chef og cinc.

Når vi kan se i overvågningen, at alle servere kører cinc, så kommer der en rettelse til

”

...

Af bilag benævnt *Change Request CHG0110614 afinstallation af Chef* af 14. februar 2024 fremgår bl.a.:

”

...

Report Title: Change Request Details
Run Date and Time: 18-06-2025 07:53:57 Central European Summer Time
Run by: Anders Bigum
Table name: change_request

Change Request

...

Impact justification:

chef klienten skal fjernes da vi bryder licensen RITM0667827

”

...

Af bilag benævnt *E-mail fra Bech-Bruun til Accura af 4. december 2024* fremgår bl.a. af delbilag 22.a.:

" ...

Fra: Henrik Lasota Gregersen
Sendt: 2. december 2024 10:30
Til: Anders Bigum
Emne: VS: Advokat spørgsmål

Hej Anders,

Nedenstående er svar fra Martin – meget grundige svar og det viser netop at hvis man downloader fra git og installerer automatisk, så kommer der ingen prompt. Som du kan se i nedenstående link er de ved at lave det om, så de har måske indset det er en fejl man ikke gøres opmærksom på dette under automatisk installation.

Venlig hilsen

Henrik Lasota Gregersen
 Funktionschef

...

Fra: Martin Køhrsen
Sendt: 2. december 2024 10:14
Til: Henrik Lasota Gregersen
Emne: Re: Advokat spørgsmål

Svar:

- Vi har brugt chefs eget software kaldet mixlib-install, til at installere chef.
 - o <https://github.com/chef/mixlib-install>
- Hentede mixlib-install ned fra github med `git clone <https://github.com/chef/mixlib-install.git>`
- Installerede mixlib-install og downloaded chef installer

...

```
[adm-mak8py@npappmak8py11v mixlib-install]$ cat LICENSE
Apache License
Version 2.0, January 2004
http://www.apache.org/licenses/

TERMS AND CONDITIONS FOR USE, REPRODUCTION, AND DISTRIBUTION
```

Så nu har jeg hentet installeren til chef på min rocky test maskine.

- [/home/adm-mak8py@Rsyd.net/mixlib-install/chef-18.5.0-1.rocky9.x86_64.rpm](#)
- Jeg har ikke mødt nogle EULA eller license terms andet end apache 2.

Hvis jeg prøver at installere den, for jeg følgende at vide.

```
[adm-mak8py@npappmak8py11v mixlib-install]$ sudo rpm -i chef-18.5.0-1.rocky9.x86_64.rpm
warning: chef-18.5.0-1.rocky9.x86_64.rpm: Header V4 DSA/SHA1 Signature, key ID 83ef826
Thank you for installing Chef Infra Client! For help getting started visit https://lea
[adm-mak8py@npappmak8py11v mixlib-install]$
```

Der er altså ingenting, som stopper en fra at hente deres software og installere det – uden information om licens.

Kører jeg deres software manuelt (chef-client), kommer der en besked om licens.

Kører jeg deres software manuelt (chef-client), kommer der en besked om licens.

```
[adm-mak8py@npappmak8py11v mixlib-install]$ chef-client
+-----+
          Chef License Acceptance
+-----+

Before you can continue, 2 product licenses
must be accepted. View the license at
https://www.chef.io/end-user-license-agreement/

Licenses that need accepting:
  * Chef Infra Client
  * Chef InSpec

Do you accept the 2 product licenses (yes/no)?

> no

If you do not accept this license you will
not be able to use Chef products.

Do you accept the 2 product licenses (yes/no)?

> no

+-----+
Chef Infra Client cannot execute without accepting the license
[adm-mak8py@npappmak8py11v mixlib-install]$
```

Da vi ikke har installeret chef manuelt, er vi ikke blevet promptet ang. Licens.

Vi har brugt knife bootstrap, til remote, at installere chef-client på servere.

- https://docs.chef.io/workstation/knife_bootstrap/

Det ligner, at det vi har gjort, er noget som progress, efterfølgende har fundet ud af at man kan og for nyligt er ved at lukke.

3

<https://www.chef.io/blog/knife-bootstrap-command-licensing-download-journey>

artikel fra d. September 20, 2024

...

Chef-server

<https://github.com/chef/chef-server>

- På deres egen github side, står der ikke noget med at "licence er required".
 - o *The Chef products may include automated license tracking, management and/or enforcement solutions which collect information to verify your license usage.*

Hvis noget af ovenstående ligger an til spørgsmål, så ta' fat i os.

/Tools teamet

... ”

Af bilag benævnt *Regionens besvarelse af Progress skønstema* af 28. oktober 2025 fremgår:

” . . .

Spørgsmål 28: Er skønsmanden baseret på skønsmandens besvarelse af ovenstående spørgsmål 15-27 og indholdet af Bilag 25 enig i, at Brugeren ikke kan køre Chef Infra Client version 18.5.0 uden først at have accepteret End User License Agreement?

Svar på spørgsmål 28: Ja i det vedlagte tilfælde. Men det er ikke sådan Region Syddanmark udfører installationen:

- 1) I modsætning til i eksemplet, downloader vi ikke manuelt Installeren.
- 2) Vi kører knife-bootstrap som i 1-14. Den kører vi med Chef_License accept parameter. Når man gør det bliver man ikke bedt om særskilt accept pga installationsprocessen. Chef_License accept parameteren bliver sat op 1 gang og så håndterer installationsprogrammet selv accept af EULA.

Det er værd at bemærke at vi anvender flere forskellige installationsmetoder alt efter formål (ny installation, daglig vedligehold, opdatering), og eksemplet med Brugeren henviser til en metode, vi slet ikke anvender, nemlig den manuelle. Det er vores opfattelse, at det er normal kutyme at man lægger en validering ind i installationsprogrammer der stopper installationen hvis der skal en bekræftelse af ændrede licensbetingelser til. Det har ikke været tilfældet her.

..."

GitHub-skærm billeder m.v.

Af bilag benævnt *Beskrivelse af open source miljøet fra GitHubs hjemmeside* (besøgt den 4. juni 2025) fremgår bl.a.:

" ...

What is Open Source Software (OSS)?

July 29, 2024

Open source software (OSS) refers to software that features freely available source code, which users may view, modify, adopt, and share for both commercial and noncommercial purposes.

Key principles of open source software development

Guided by the key principles of transparency, collaboration, and decentralization, the open source software model creates code from the community—and community from the code.

Why is open source important to your business?

...

Cost savings. OSS source code is free, resulting in a lower total cost of ownership compared to proprietary or closed source solutions.

Community support. OSS projects tap into the expertise of a developer community. The community makes contributions all throughout the development, review, and deployment process, resulting in quicker updates and fewer vulnerabilities.

...

How does open source software work?

The code usually comes with a license, which defines what a user can and cannot do with the software. Some licenses are permissive and allow you to use and distribute the code for any purpose, while others may require that you explicitly log any changes when you share. Other licenses may stipulate that all copies of the source code be free and available for public use. Some of today's most popular licenses include:

...

Apache 2.0. Much like the MIT license, the Apache 2.0 license is a popular and permissive software license that allows users to do anything they want with the code—so long as they log any major changes made. ...”

Af bilag benævnt *Beskrivelse af GitHub* (besøgt den 4. juni 2025) fremgår bl.a.:

” ...

Hvis vi siger GitHub, ved du så, hvad vi taler om?

Hvis ikke, er vi henrykte over, at du læser med her. Dette er vores første artikel miniserien “GitHub for begyndere”.

Læs med her - der er nemlig en god chance for, at du bør kende mere til platformen... Og til sidst hjælper vi dig selvfølgelig godt i gang.

...

...Og hvad er det så?

GitHub er en international platform, hvor udviklere samarbejder om at skrive kode, dokumentere og styre projektets opgaver.

Det er et sted, hvor du kan finde millioner af open source-projekter, dele din egen kode, og samarbejde med andre over hele verden.

GitHub er dog ikke kun for programmører – GitHub kan bruges af alle, der arbejder med digitalt indhold, lige fra dataforskere over projektledere til dokumentationsansvarlige eller sågar forfattere (!)

ginyheder-2/github-for-begyndere-1-4396

GitHub for begyndere #1 | OS2 – Offentligt digitaliseringsfællesskab

OS²
offentligt
digitaliseringsfællesskab

Kontakt os

skrivende stund er GitHub den mest udbredte platform.

...”

Af bilag benævnt *Chef Software under Apache 2.0 på GitHub* (besøgt den 4. juni 2025) fremgår bl.a.:

” ...

04.06.2025, 11.07 GitHub - chef/chef: Chef Infra, a powerful automation platform that transforms infrastructure into code

chef / chef Public

Bilag E
Bech-Bruun

Chef Infra, a powerful automation platform that transforms infrastructure into code automating how infrastructure is configured, deployed and managed across any environment, at any scale

www.chef.io/chef/

Apache-2.0 license

7.8k stars 2.5k forks Branches Tags Activity

Star Notifications

<> Code Issues 312 Pull requests 65 Discussions Actions Wiki Security

589 Branches 5181 Tags Go to file Go to file Code ...

chef-ci Bump version to 19.1.30 by Chef Expeditior 7aad55e · 19 hours ago

.buildkite	Add line-lint linter (#15009)	19 hours ago
.expeditor	Add line-lint linter (#15009)	19 hours ago
.github	Add line-lint linter (#15009)	19 hours ago

...

LICENSE	Chef should have the license an...	17 years ago
NOTICE	Opscode -> Chef and remove ol...	9 years ago
README.md	Creating a checklist to help us s...	10 months ago

...

README Code of conduct Apache-2.0 license Security

Chef Infra

maintainability ? build failing gem version 18.7.10 Release Policy Cadence Release

Umbrella Project: [Chef Infra](#)

Project State: [Active](#)

Issues [Response Time Maximum](#): 14 days

Pull Request [Response Time Maximum](#): 14 days

...

Af bilag benævnt *Chef opdaterings- og installationsvejledning på GitHub* (besøgt den 11. juni 2025) fremgår bl.a.:

” ...

11.06.2025, 17.24 GitHub - chef-cookbooks/chef_client_updater: Chef Cookbook to update the chef client

chef-cookbooks / chef_client_updater Public

Chef Cookbook to update the chef client on nodes

supermarket.chef.io/cookbooks/chef_client_updater

Apache-2.0 license

54 stars 80 forks Branches Tags Activity

Star Notifications

<> Code Issues 14 Pull requests 5 Actions Security Insights

9 Branches 61 Tags Go to file Go to file Code ...

saghoshprogress Merge pull request #245 from pratixha/pratiksha/windows_un...
79e696d · 2 years ago

.delivery Update master to main 3 years ago

...

README Code of conduct Apache-2.0 license

chef_client_updater

delivery failing cookbook v3.12.3

This cookbook updates the Chef Infra Client

...

Chef EULA

Set the `node['chef_client']['chef_license']` attribute to `accept` or `accept-no-persist` to accept the Chef EULA when upgrading to Chef Infra Client 15 or higher.

...

License

Copyright:: 2016-2020, Chef Software, Inc

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you may not use this file except in compliance with the License.
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”

*Licensvilkår*Apache 2.0.-licensen

Af Apache License Version 2.0, January 2004 fremgår bl.a.:

" ...

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END OF TERMS AND CONDITIONS

..."

Chef EULA'en

Af bilag benævnt *Slutbrugerlicensaftalen*, som senest ændret 28. april 2021 fremgår bl.a.:

" ...

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Last Modified: April 28, 2021 (view archived version)

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...

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...

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...

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Default License Type for each of the above-referenced On-Premise Products and Hosted Service: Subscription.

...

3.1. Product Family Definitions.

...

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...

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...”

Forklaringer

Der er under sagen afgivet forklaring af Prashanth Nanjundappa, Maria Trigoni og Anders Bigum.

Prashanth Nanjundappas forklaring

Prashanth Nanjundappa har forklaret bl.a., at han er ansat i Progress Software som vicepræsident i afdelingen for produkt management. Han var tidligere ansat som produktchef for Chef Software. Progress opkøbte Chef for nogle år siden. Han deltog her i due diligence-processen i transformationen. Hans rolle bestod blandt andet i at definere produktstrategien og identificere priser, partnere, markedspositionen, arkitektur og design. Han håndterede også open source i relation til Chef.

Chef er en software, der kan hjælpe virksomheder med at administrere anvendelsen af software i servere. Dette er en fordel for virksomheder med mange servere med styresystemer og driftssystemer. Disse systemer kræver løbende installation og opdateringer af software, og her kan Chef med fordel anvendes for at minimere behovet for menneskelige ressourcer i relation til disse opgaver.

Chef Infra softwaren består af en serverkomponent og en klientkomponent. Serverkomponenten og klientkomponenten er forbundne, hvilket giver brugeren indsigt i alle de servere, der skal håndteres. Dermed kan en Chef-server håndtere brugerens respektive servere og sørge for vedligeholdelse af enhederne.

I 2019 ændrede Progress sin forretningsmodel og introducerede enterprise-versionen af Chef-softwaren. Community-versionen var fortsat gratis tilgængelig, men blev ikke længere distribueret og vedligeholdt af Progress. Enterprise-versionen blev fortsat håndteret af Progress, men krævede kundernes accept af EULA og licensbetingelserne, før den kunne anvendes. En fordel ved at anvende enterprise-versionen er, at Progress tilbyder professionel support og service fra tekniske eksperter. Hertil kommer, at Progress løbende opdaterer softwaren. Disse fordele har brugerne af community-versionen ikke adgang til.

Prashanth Nanjundappa blev foreholdt bilag benævnt "Frigivelsesnote (Release Note) for Chef Infra Client version 15.0.293" af 14. maj 2019. Prashanth Nanjundappa forklarede herom, at der er tale om en release note, som primært er rettet mod udviklere. Formålet med release noten er blandt andet at informere brugeren om, at den pågældende version af Chef, som er et nøgleelement i softwaren, er en del af udgivelsen. Alle release notes offentliggøres, og den pågældende release note var blandt andet tilgængelig på GitHub. Brugeren skal ikke igennem en betalingsmur for at tilgå Progress' release notes.

EULA blev indført i maj 2019. Afsnittet vedrørende EULA i release noten beskriver forskellige måder, hvorpå brugeren kan acceptere EULA. To af disse måder er automatiserede kommandoer. Anvendes en sådan automatiseret kommando ikke, ledes brugeren til et inaktivt stadie og bliver mødt med en interaktiv prompt, hvor EULA kan accepteres manuelt. Såfremt brugeren ikke tidligere har anvendt en automatiseret kommando, vil denne interaktive prompt fremkomme i forbindelse med brugerens forsøg på at opstarte Chef.

Prashanth Nanjundappa blev foreholdt bilag benævnt "Download, installation and run of Chef Infra Client via knife bootstrap". Prashanth Nanjundappa forklarede herom, at han var involveret i udarbejdelsen af dette dokument. Dokumentet viser, hvordan installation af Chef ser ud for en bruger, der hhv. accepterer og ikke accepterer EULA. De nødvendige komponenter til installation af Chef er markeret i grøn og sort. "Workstation" viser, hvilke redskaber, der er tilgængelige. Når disse redskaber er installeret, kan installationen af Chef gennemføres. Med den røde farve illustreres brugerens forsøg på opstart af Chef Client version 18.5.0, når brugeren ikke har accepteret EULA og mødes af den interaktive prompt. Brugeren gøres her opmærksom på, at der kræves en accept af licensen. Længere nede i dokumentet vises et eksempel, hvor brugeren har accepteret EULA og licensen og installation af Chef derfor påbegyndes. Installationen foregår her gennem Knife Bootstrap, der er et værktøj, som Progress tilbyder brugerne for at automatisere installation og styring af Chef-redskaber.

Prashanth Nanjundappa blev foreholdt bilag benævnt "Download, installation and run of Chef Infra Client via mixlib-install". Prashanth Nanjundappa forklarede herom, at han ligeledes var involveret i udarbejdelsen af dette dokument. Dokumentet viser brugerens forsøg på installation af Chef Client gennem Mixlib. Det fremgår her, at det er første gang brugeren opstarter Chef, og EULA skal derfor accepteres. Det illustreres, at brugeren mødes af en interaktiv prompt og ikke kan opstarte Chef uden accept af licensen. Det fremgår ligeledes, at Chef opstarter, når brugeren accepterer EULA. Det fremgår, at installationen vedrører version 18.5.0. Progress afsluttede demonstrationen af udførelsen af installation af Chef dette sted i processen. Den røde tekst indebærer, at der er behov for yderligere information for at opstarte Chef, men betyder ikke, at Chef ikke kan opstartes ved dette trin.

De to dokumenter, der viser installation gennem hhv. Knife Bootstrap og Mixlib, er genereret ud fra den seneste version af Chef Infra Client, der på dette tidspunkt var version 18.5.0. Det samme var tilfældet ved tidligere versioner efter skiftet i 2019, herunder i 2022. Progress anvendte ikke tidligere versioner af softwaren til at generere dokumenterne, da dette ville kræve uforholdsmæssige ressourcer. Desuden vidste de, at der ikke var forskel på versionerne, og Chef Infra Client kan ikke på nogen måde anvendes og opstartes uden accept af EULA.

Prashanth Nanjundappa blev foreholdt bilag benævnt "Frigivelsesnote (Release Note) for Chef Infra Client version 15.0.293" af 14. maj 2019. Prashanth Nanjundappa forklarede herom, at dokumentet viser forskellige måder, hvorpå brugeren kan acceptere EULA. Der vises både en manuel fremgangsmåde og en automatiseret fremgangsmåde. De sidste to koder i dokumentet medfører en automatiseret accept af EULA. Hvis en bruger ved installation af Chef gennem Knife Bootstrap havde anvendt en automatiseret kommando, ville brugeren ikke blive mødt af den interaktive prompt. Automatiseringens formål er netop, at brugeren ikke manuelt skal acceptere.

Automatiseret accept af EULA kan være fordelagtig for brugeren af flere årsager. En manuel accept er tidskrævende og er en udfordring ved blandt andet cyberangreb, hvor organisationen for at forhindre angreb hurtigt skal installere software og acceptere betingelser på mange enheder. Den automatiserede accept giver mulighed for at håndtere omfattende infrastrukturer lettere.

De automatiserede kommandoer blev introduceret i maj 2019 og har ikke andre funktioner end at acceptere EULA automatisk. Brugerne blev gjort opmærksomme på de automatiserede kommander gennem release notes, blogindlæg og pressemeddelelser. Der fremkommer også en meddelelse for brugeren, når softwaren har behov for opdatering.

Knife Bootstrap kan ikke anvendes til at omgå kravet om accept af EULA. Hvis en bruger ikke her accepterer EULA manuelt eller automatisk, kan Chef ikke anvendes.

Såfremt en bruger efter ændringen i forretningsmodellen i 2019 anvendte den gratis community-version og ønskede at opdatere til enterprise-versionen, ville brugeren ved installation af opdateringen skulle acceptere EULA. Hvis brugeren anvendte en automatisk kommando, ville brugeren herigennem have accepteret EULA, og EULA skulle ikke accepteres manuelt. Hvis brugeren ikke anvendte en automatisk kommando, ville brugeren blive præsenteret for den interaktive prompt og skulle her manuelt acceptere EULA. Det er almindelig praksis at anvende automatiseret accept af brugerbetingelser i softwarebranchen.

Ved Open Source-software er koden tilgængelig for slutbrugeren. Kildekoden kombineres med den binære kode, for at køre softwaren.

Der fremgår fire måder, hvorpå licensen kan accepteres. Konfigurationskoden/kommandoen skrives ind i kildekoden i Chef Client programmet. Dermed er logikken skrevet ind i kildekoen gennem kommandoen. Såfremt den første kildekode anvendes, er logikken for kildekoden, at brugeren accepterer EULA. Ved opdateringer er der derfor ikke behov for, at brugeren skriver koden igen,

idet logikken allerede er tilføjet i en tidligere version. En accept af licensen gemmes særskilt, og brugeren mødes herefter ikke af en interaktiv prompt med krav om accept. Hvis brugeren derimod ikke tidligere har indtastet kommandoen, er der ved en opdatering behov for brugerens accept af licensen.

I 2024 indførte Progress en licensnøgle til en specifik version af Chef. Brugeren skal ikke anvende en licensnøgle i den aktuelle version af Chef. For at installere den aktuelle version kræves en accept af EULA og der anvendes en interaktiv prompt. Kravet om en licensnøgle blev fjernet for at gøre processen nemmere for brugerne.

Maria Trigonis forklaring

Maria Trigoni har forklaret bl.a., at hun er ansat som vicepræsident i Progress' afdeling for Software Asset Management. Hun har været ansat i Progress i 12 år.

For at anvende enterprise-versionen af Chef-softwaren skal kunden acceptere EULA og kravet om en licens. Licensen skal accepteres før softwaren kan anvendes. Licensen indebærer et abonnement med årlig betaling. Der er ikke mulighed for tilbagebetaling fra Progress for den årlige betaling eller en del heraf, hvis der sker ændringer i kundens behov og anvendelse af softwaren.

Hun var involveret i korrespondancen mellem regionen og Progress i 2024. Hendes opgave var at forklare regionen, hvorfor der eksisterede et krav om licens, og hvilke udfordringer Progress havde angående regionens overholdelse af EULA.

Maria Trigoni blev foreholdt bilag benævnt "E-mailudveksling mellem Niklas Enge og Maria Trigoni fra Progress og Margretha J. Magnusardóttir fra Region" af 9. – 28. februar 2024. Maria Trigoni forklarede herom, at hun i denne korrespondance besvarede en henvendelse fra regionens kontraktledelsesteam, der ønskede yderligere information fra Progress. Regionen efterspurgte blandt andet logfiler, som viser regionens accept af EULA, samt selve EULA-dokumentet og Progress' kommunikation af ændringen af vilkårene i 2019. Hun fremsendte EULA og besvarede spørgsmålene et efter et. Hun forklarede regionen, at det ikke var muligt at opstarte Chef uden at acceptere EULA. Hun henvisede til link, der viser ændringen i Progress' forretningsmodel. Hun refererede også til tidligere kommunikation fra 2022 mellem regionen og den tidligere kontoansvarlig i Progress. Regionen efterspurgte herefter en pris for 4.000 no-

der, hvilket Progress besvarede. Hun anbefalede regionen at vente med at afinstallere Chef til drøftelserne om situationen var afsluttet, fordi der ellers var en risiko for, at oplysninger ville gå tabt. Hun ved ikke, om regionen fulgte hendes råd. Progress udarbejdede også en guide til regionen, men fik aldrig et svar fra regionen. Korrespondancen med regionen var skuffende, frustrerende og uprofessionel. Diskussionerne førte ikke til en udvikling i situationen, og regionen aflyste et planlagt møde.

Regionen har aldrig betalt for produktet, og Progress har derfor ikke en ordrebekræftelse. Det er forskelligt, hvordan virksomheder reagerer i tilfælde af anvendelse af Chef uden licens. De fleste større organisationer ønsker at forstå, hvordan situationen er opstået. I et sådant tilfælde gennemgår Progress almindeligvis fremgangsmåden og engagerer sig i en løsning af situationen. Progress har oplevet 25-30 tilfælde af ulicenseret anvendelse af Chef-softwaren. De har formået at finde en løsning i alle andre tilfælde end dette. I disse situationer er der i prisen taget højde for antallet af noder, og om kunden har afinstalleret produktet eller afsluttet anvendelsen. Progress har aldrig før været nødsaget til at anlægge en retssag som denne.

Anders Bigums forklaring

Anders Bigum har forklaret bl.a., at han indtil den 31. december 2025 var ansat som afdelingschef i regional IT i Region Syddanmark. Organisationen havde omkring 25.000 ansatte og en lang række forskellige IT-understøttende aktiviteter, og hans afdeling bestod af omkring 135 ansatte. Opgaverne i hans afdeling omfattede blandt andet IT-relaterede tekniske og brugerrelaterede opgaver vedrørende driften af servere, netværk, systemforvaltning og brugersupport. Han mener, at der i regionen i alt var omkring 1.200 supportkrævende systemer. Mange af de kliniske systemer blev forvaltet på sygehusene. Her var 200-400 systemer, hvoraf de 100-150 var tekniske systemer, som minder om Chef-systemet. Han vil betegne Chef som et teknisk system, der understøtter andre systemer.

Regionen anvendte open source-software. Der fandtes ikke en officiel open source-strategi i regionen, men open source blev anvendt i de tekniske drifts- og udviklingsmiljøer. Regionen anvendte open source-software, fordi det er fleksibelt, nemt tilgængeligt og billigt. Han mener, at regionen anvendte omkring 50 forskellige typer open source-software, som de fandt frem til gennem forskellige community platforme, herunder GitHub. På denne platform kunne regionen også udveksle erfaringer med andre brugere samt få inspiration.

Han kender godt til Apache 2.0 licensen. Denne licenstype er relativt almindeligt anvendt i open source-miljøet. Han deltog ikke i beslutningen om at anvende Chef Infra i regionen. Han blev ansat i regionen i 2019, og han mener, at

regionen anvendte Chef i hvert fald nogle år forud for dette. Han hørte første gang om Chef i forbindelse med en sag i 2024. Han var ikke involveret i at opdatere Chef, men det er sandsynligt, at Chef skulle opdateres løbende.

Anders Bigum blev foreholdt bilag benævnt "E-mailudveksling mellem Collin J Hodgson fra Progress og Henrik Paulsen fra Regionen" af 4. – 26. august 2022. Anders Bigum forklarede herom, at afsender Henrik Paulsen var en medarbejder i regionens tekniske team for infrastruktur og datasikring. Han kender ikke den konkrete baggrund for korrespondancen, men han ved, at teknikkerne ofte undersøger markedet for nye teknologier, der kan forbedre driften af infrastrukturen. Såfremt der er interessante nye løsninger, er det almindeligt, at teknikeren spørger ind til prisen. GUI (Graphical User Interface/grafisk brugergrænseflade) kan være en årsag til at rette henvendelse. En medarbejder på teknikerniveau har dog ikke bemyndigelse til at købe et sådant system. Det havde han sådan set heller ikke selv, idet hans kompetence gik til omkring 0,5-1 mio. kr. Der er strenge regler for, hvornår opgaver skal sættes i udbud i regionen, og beløbet i denne korrespondance er over mindstegrænsen.

Anders Bigum blev foreholdt bilag benævnt "E-mailudveksling mellem Niklas Enge fra Progress og Henrik Paulsen fra Regionen" af 2. – 11. januar 2024. Anders Bigum forklarede herom, at han var involveret i denne dialog. På dette tidspunkt var det afdelingens opfattelse, at de anvendte open source. Han havde ikke på dette tidspunkt hørt om EULA fra Progress, men er først efterfølgende blevet gjort bekendt med denne. Han mener ikke, at regionen anvendte de yderligere funktionaliteter, som var tilgængelig gennem enterprise-versionen. Brugen af Chef i regionen var meget begrænset, og regionen fik ikke support/støtte fra Chef. Chef blev anvendt af to medarbejdere til et meget overskueligt opgaveomfang bestående af udrulning af forskellige funktionaliteter i servermiljøet i regionen.

Anders Bigum blev foreholdt bilag benævnt "E-mail fra Bech-Bruun til Accura af 4. december 2024" af 4. december 2024. Anders Bigum forklarede herom, at Progress i 2024 gjorde regionen opmærksom på, at de mente, at softwaren var betalingspligtig. Parterne havde herefter en dialog angående prissætning og betaling. Hans team fik besked på at afinstallere softwaren, hvilket de straks gjorde. Herefter meddelte de Progress, at de ikke anså softwaren for betalbar, at de i så fald ikke ville have anvendt softwaren, og at de nu havde fjernet softwaren. Dette var Progress dog ikke tilfredse med. I løbet af 2024 forsøgte regionen at overbevise Progress om, at de ikke havde accepteret at købe noget. De oplyste Progress om de omfattende procedurer, der skal overholdes ved handel med regionen som organisation, samt hvordan processen med at downloade softwaren var foregået. Dialogen blev mere teknisk, da advokaterne blev involveret. Her beskrev de download og opdatering af softwaren. Fra 2016 til 2024 har regionen alene opdateret softwaren og har ikke ny- eller afinstalleret noget. Ved-

rørende den automatiske installationsfunktion anser han dette som et parameter, der kan tilføjes, således at installationen af software automatiseres. Denne metode er praktisk for en organisation med mange servere, idet det sikres, at softwaren forbliver opdateret. Metoden er almindelig og findes på mange forskellige software fra forskellige producenter.

Anders Bigum blev foreholdt bilag benævnt "Regionens besvarelse af Progress skønstema" af 28. oktober 2025. Anders Bigum forklarede herom, at han deltog i besvarelsen af dette skønstema. Det er ham, der har udarbejdet svaret til spørgsmål 28, hvori det beskrives, hvordan regionen opsatte parameteret. Hvis han var blevet gjort opmærksom på EULA, ville han have undersøgt, hvad en accept af EULA indebar. Såfremt anvendelsen af en software kræver betaling, skal det vurderes, om regionen har økonomi til at indkøbe softwaren, samt om det er en forsvarlig forvaltning af skatteydernes penge. I dette tilfælde ville regionen ikke have haft økonomi til at betale for softwaren. De anvendte GitHub og hentede softwaren herfra. Han har ikke selv hentet softwaren, men han mener, at regionens teknikere har dokumenteret, at Chef blev hentet fra GitHub. Det er korrekt, at regionen anvendte den fremgangsmåde, der er beskrevet i svaret til spørgsmål 28. Han var ikke selv involveret i opdateringsprocessen, men han har drøftet denne med medarbejderen Henrik Lasota Gregersen og andre medarbejdere. Medarbejderne hos regionen undersøger, hvad en kommando betyder og indebærer, inden kommandoen foretages. Der er tale om kritisk infrastruktur, og medarbejderne anvender derfor aldrig en automatiseret kommando uden at vide, hvad den teknisk indebærer.

Regionen blev på et tidspunkt opmærksomme på softwaren CINC, der står for "CINC is not Chef". Dette er en provokerende måde at indikere, at denne software kan anvendes, hvis en bruger ikke vil betale for Chef. Han mener, at det er et udtryk for, at regionen ikke er de første, der har oplevet udfordringer i relation til Chef. CINC er en hurtig løsning på dette problem. CINC er open source-software og har den fornødne funktionalitet til regionens behov. Det tog kun få dage af skifte fra Chef til CINC, og Chef var dermed ikke en kompliceret installation at udskifte.

Efter hans mening er det ikke nogen hemmelighed, at der i softwarebranchen findes licensvampyrer, som forsøger at gøre software betalbart på forskellige måder. Der er ikke meget i branchen, der kan overraske ham, men forløbet med Progress er noget af det mest udspekulerede og manipulerende, han har været udsat for. Det er dygtige og erfarne teknikere, der opererer på GitHub, som kender til licensbetingelser og open source licenseringer. Progress' fremgangsmåde umuliggør det selv for garvede fagfolk at gennemskue, at der skal betales for softwaren.

Anders Bigum blev foreholdt bilag benævnt "Frigivelsesnote (Release Note) for Chef Infra Client version 15.0.293" af 14. maj 2019. Anders Bigum forklarede herom, at han er bekendt med begrebet release note. På baggrund af teksten i release noten mener han fortsat, at det er uigennemskueligt for kunden, at Chef-softwaren kræver betaling. Regionen installerede ikke softwaren i 2019, hvor release noten blev fremsendt, men opdaterede softwaren ud fra en gratis Apache 2.0 licensering. Progress har udarbejdet den automatiske opdatering af licensbetingelsen, som regionens medarbejdere anvendte for at undgå at skuææe opdatere manuelt. Han mener, at regionen har anvendt kommandoen "chef-client --chef-license accept", men det er ikke ham, der har indskrevet koden.

Anders Bigum blev foreholdt bilag benævnt "Change Request CHG0110223 installation af CINC" af 12. februar 2024. Anders Bigum forklarede herom, at han ikke er bekendt med de nøjagtige tekniske konsekvenser ved at afinstallere Chef og erstatte Chef med CINC. Han ved, at regionen er forsigtig med at ændre software, der relaterer sig til kritisk infrastruktur. Hvis en afinstallation af Chef havde bragt behandlingen af regionens patienter i fare, ville regionen ikke have afinstalleret softwaren, selvom denne kostede penge. Det er selve regionens infrastruktur, der er kritisk, men ikke softwaren CINC eller Chef. Disse software gør dagligdagen lettere og kan påvirke serverne i den kritiske infrastruktur. Det kan have negative konsekvenser, hvis softwaren installeres på en uhensigtsmæssig måde. Han ved ikke, om regionen selv vedligeholder CINC, men sandsynligheden for dette er lille. Han tror, at der er et open source-miljø omkring CINC, der er community baseret.

Parternes synspunkter

Progress Softwares hovedsynspunkter

Progress Software har i det væsentlige procederet i overensstemmelse med sit påstandsdokument. I påstandsdokumentet har Progress Software sammenfattet sine anbringender som følger:

" ...

4 ANBRINGENDER

4.1 Oversigt over anbringender

Progress gør sammenfattende følgende gældende.

Regionen har anvendt Enterprise Edition af Softwaren i hvert fald fra april 2022 og indtil første halvdel af 2024 uden at have betalt den årlige abonnementsafgift og dermed uden licens.

Regionens anvendelse udgør en krænkelse af Progress' ophavsret efter ophavsretslovens § 2. For det første har Regionen faktisk accepteret den gældende Slutbrugerlicensaftale. Chef Infra Client kan ikke køres uden forudgående accept, og det må lægges til grund, at Regionen har anvendt den automatiserede kommando, som Progress introducerede i maj 2019 specifikt med henblik på at acceptere slutbrugerlicensvilkår på brugerens vegne. For det andet – og under alle omstændigheder – udgør Regionens anvendelse af kommerciel software uden gyldig licens en krænkelse, uanset om den gældende Slutbrugerlicensaftale formelt er blevet accepteret. Regionen kan ikke unddrage sig ansvar ved at henvise til, at man "troede", at Softwaren var frit tilgængelig under Apache 2.0-licensen, at Softwaren var tilgængelig på GitHub, at der ikke foreligger en "Order", at Slutbrugerlicensaftalen ikke angiver prissætning, eller at man ikke har læst licensvilkårene. En professionel bruger af kommercielle softwareprodukter er forpligtet til at undersøge og overholde de vilkår, der regulerer brugen af den software, der tages i anvendelse. Desuden er det fast antaget i dansk ret, at automatiseret accept eller "clickwrap"-accept af softwarelicensvilkår skaber en gyldig aftale (U.2021.2928, U.2024.4404, BS-20469/2023-SHR).

Progress har krav på rimeligt vederlag efter ophavsretslovens § 83, stk. 1, jf. § 76, stk. 1. Vederlaget skal svare til de abonnementsafgifter, som Regionen ville skulle have betalt for lovlig anvendelse, beregnet på grundlag af Progress' standardlicensaftale og standardlisteprisen (U.2014.1396 H).

Regionen har som minimum handlet uagtsomt, jf. ophavsretslovens § 83, stk. 1. Regionen blev gentagne gange og utvetydigt gjort opmærksom på, at Softwaren var et kommercielt produkt underlagt licensvilkår med krav om betaling af årlig abonnementsafgift. Dette understøttes blandt andet af (i) den interaktive prompt, der blev vist forud for enhver kørsel af Chef Infra Client (bilag 22.a, 24 og 25) [E394, E473 og E477], (ii) de offentligt tilgængelige frigivelsesnoter (*release notes*) fra maj og juli 2019 (bilag 9 og 10) [E115 og E133], (iii) Regionens egen anvendelse af den automatiserede kommando, der er indrettet til at acceptere den gældende Slutbrugerlicensaftale, og som ikke har andre funktioner end netop dette formål (bilag 26 og 27) [E449 og E459], og parternes kommunikation i august 2022, hvor der blev afgivet et konkret tilbud på grundlag af Softwarens kommercielle karakter – et tilbud, som Regionen afslog samme dag, hvorefter Regionen fortsatte med at anvende Softwaren uden at sikre sig, at man ikke gjorde brug af Enterprise Edition af Software (bilag 14) [E177]. Regionen kan ikke med nogen rimelighed påstå at have handlet i god tro.

Antallet af "nodes" er baseret på Regionens egne oplysninger (bilag 15) [E235]. Prisen pr. "node" er fastlagt ved tilbuddet til Regionen (bilag 14) [E177] og bekræftet af fakturaer udstedt til andre kunder i arm's length transaktioner (bilag 28-30) [E471, E183, E185]. Ingen af Regionens anbringender om nedsættelse af vederlaget kan tages til følge.

Progress har krav på procesrente af USD 550.000 fra den 1. marts 2024 efter rentelovens § 3, stk. 2, dvs. 30 dage efter betalingsanmodningen af 31. januar 2024 (bilag 11) [E347], og på procesrente af det resterende beløb på USD 45.750 fra sagens anlæg efter rentelovens § 3, stk. 4, subsidiært af hele påstandsbeløbet fra sagens anlæg.
..."

Progress Software har derudover yderligere redegjort for sine synspunkter i påstandsdokumentet og de i øvrigt indgivne processkrifter.

Region Syddanmarks hovedsynspunkter

Region Syddanmark har i det væsentlige procederet i overensstemmelse med sit påstandsdokument. I påstandsdokumentet har Region Syddanmark sammenfattet sine anbringender som følger:

"...

Anbringender

1. Oversigt over anbringender

Regionen bestrider på noget tidspunkt for Progress' Chef-software at have accepteret og eller på anden måde være bundet af Progress' End-User-License-Agreement (EULA), hvorpå Progress støtter sit betalingskrav, idet Progress selv har tilgængeliggjort Chef-softwaren på platformen GitHub under open sourcelicensvilkårene Apache 2.0, og det er disse open source-licensvilkår, Regionen har accepteret. Disse vilkår angiver, at Chef-softwaren frit kan downloades, installeres og anvendes af Regionen uden betaling.

Det gøres endvidere gældende, at Regionen alene har accepteret de eneste tilgængelige licensvilkår for Chef-softwaren på GitHub i form af Apache 2.0-vilkårene, jf. Bilag D, som giver Regionen ret til frit at downloade, installere, modificere, ændre og anvende Chef-softwaren, hvorfor Regionen ikke har krænkert Progress' ophavsrettigheder eller andre rettigheder i øvrigt.

Regionen skal derfor frifindes for Progress' betalingspåstand, uanset om denne støttes på et påstået aftalegrundlag i form af Progress' EULA eller ophavsretslovens § 83 eller andre forhold.

Såfremt retten skulle finde, at EULA'en er vedtaget mellem parterne, eller at Regionen skulle have krænket Progress' ophavsrettigheder, gøres følgende gældende i relation til det krævede vederlag og forrentningen heraf:

Progress' krav skal nedsættes med 85 % eller med en lavere procentsats fastsat af retten, idet ingen kunder og navnlig slet ikke Regionen betaler licensgiveres listepreiser for software, og idet rabatter på listepreiser på 85-90 % slet ikke er usædvanlige, subsidiært skal kravet nedsættes, jf. tidligere fremsendt tilbud pr. node og den relevante brugsperiode svarende til

Det gøres gældende, at Progress' krav på grund af manglende rentepåkrav under alle omstændigheder tidligst kan forrentes fra sagens anlæg til betaling sker.

..."

Region Syddanmark har derudover yderligere redegjort for sine synspunkter i påstandsdokumentet og de i øvrigt indgivne processkrifter.

Rettens begrundelse og resultat

Sagens baggrund og tvistepunkter

Sagen er anlagt af Progress Software Corporation, herefter Progress Software, mod Region Syddanmark og har sin baggrund i Region Syddanmarks brug af softwaren Chef Infra i en periode i årene 2022-2024 på en række "noder", dvs. servere og tilknyttede enheder. Chef Infra bruges bl.a. til at overvåge og vedligeholde konfigurationen af en organisations noder og til at implementere ændringer i konfigurationen systematisk og ensartet. Således kan f.eks. opdateringer af sikkerhedssystemer implementeres på tværs af organisationen.

I Chef Infra indgår bl.a. delelementerne Chef Infra Server, hvor konfigurationsdata, som noderne skal konfigureres efter, lagres, og Chef Infra Client, der sørger for, at den pågældende node konfigureres som ønsket, hvilket sker ved, at Chef Infra Server bedes om konfigurationsoplysninger.

Ifølge Progress Software har Region Syddanmark i forbindelse med download og installation af opdateringer af Chef Infra accepteret Progress Softwares End-User-License-Agreement (EULA) for softwaren. Regionen skal derfor betale

standardlisteprisen pr. node for sin brug af Chef Infra. I tillæg hertil, og uafhængig af, om EULA'en er aftalt mellem parterne, er regionen også efter ophavsretsloven forpligtet til at betale listeprisen som vederlag for sin uretmæssige brug af Chef Infra i strid med Progress Softwares rettigheder.

Region Syddanmark anfører heroverfor, at regionen har downloadet og installeret Chef Infra og opdateringer heraf via GitHub. Regionen har i den forbindelse alene accepteret licensvilkår for Chef Infra i form af Apache 2.0-vilkårene. Efter disse kan softwaren frit downloades, installeres og anvendes uden betaling. En ophavsretlig krænkelse foreligger heller ikke. Regionen anfører også, at ingen kunder, og navnlig slet ikke store kunder som regionen, betaler listepriser for software som den omhandlede, og Progress Softwares krav skal derfor i givet fald nedsættes med 85 % eller en lavere procentsats, , svarende et tidligere fremsendt tilbud pr. node og den relevante brugsperiode.

"2019-ændringen" og Region Syddanmarks installation og brug af Chef Infra

Efter bevisførelsen lægger retten til grund, at Chef Software indtil 2019 via GitHub stillede Chef Infra til rådighed for download som Open Source-software undergivet Apache 2.0.-licensvilkår, at Chef Software i april og maj måned 2019 offentligt kommunikerede, at download og brug af fremtidige versioner af Chef Infra-softwaren ville skulle ske i henhold til EULA'en, og at nyinstallation af softwaren og versionsopdateringer fremover ikke længere ville kunne foretages af brugere, uden at disse accepterede EULA'en – enten ved manuel indtastning eller ved en automatiseret acceptkommando ("2019-ændringen"). Det lægges endvidere til grund, at der de relevante steder på GitHub efter 2019-ændringen fortsat blev henvist til Apache 2.0. med hensyn til licens.

Retten har herved lagt vægt på navnlig de fremlagte blogindlæg, release notes og FAQ's og skærbilleder fra GitHub samt den forklaring, som er afgivet af VP, Product Management, hos Progress Software, Prashanth Nanjundappa.

Med hensyn til Region Syddanmarks download og brug af Chef Infra lægger retten efter bevisførelsen til grund, at regionen downloadede Chef Infra på et tidspunkt i 2016 og efterfølgende og frem til det tidspunkt, hvor regionen skiftede til softwaren CINC ("Cinc is not Chef") i 2024, opdaterede Chef Infra ved at downloade nye versioner fra GitHub og installere disse i sine systemer, således at der i april 2022 bl.a. var sket installation og brug af en version af Chef Infra, som var tilgængeliggjort efter 2019-ændringen. Endvidere lægges det til grund, at der i regionens system var opsat en automatiseret acceptkommando, som sørgede for, at der i forbindelse med opdateringer af Chef Infra blev givet de godkendelser af vilkår m.v., som var en forudsætning for at ibrugtage nye versioner af Chef Infra.

Herved har retten lagt vægt på navnlig mailkorrespondance mellem Henrik Paulsen fra Region Syddanmark og Niklas Enge fra Progress Software den 11. januar 2024, mail af 31. januar 2024 fra funktionschef Henrik Lasota Gregersen, Region Syddanmark, til bl.a. Senior Director Software Asset Management hos Progress, Maria Trigonis, Region Syddanmarks besvarelse af 28. oktober 2025 af spørgsmål 28 i udkast til skønstema samt den forklaring, som er afgivet af tidligere afdelingschef i Region Syddanmark Anders Bigum.

Den interne undersøgelse i Region Syddanmark, hvis resultater Martin Køhrsen den 2. december 2024 fremsendte til Henrik Lasota Gregersen, kan ikke føre til en anden bevisvurdering, bl.a. fordi der ikke her er holdepunkter for, at der ikke skulle have været opsat en automatiseret acceptkommando i regionens systemer.

Aftaleindgåelse

Spørgsmålet er herefter, om Region Syddanmarks ved sin automatiserede accept af EULA'en i forbindelse med opdateringer af Chef Infra efter 2019-ændringen har indgået en licensaftale med Progress Software. Regionens viljeserklæring skal i givet fald anses for være givet ved, at regionen oprettede – og ikke som følge af 2019-ændringen fjernede – den automatiserede acceptkommando i sine systemer.

Retten finder, at denne acceptform ikke fuldt ud kan sidestilles med såkaldt klikwrap-accept af forretningsbetingelser o.l., hvor den pågældende kontrakt-part for at afgive en bindende viljeserklæring typisk vil skulle foretage en aktiv handling ved at sætte flueben ved et sæt forretningsbetingelser e.l.

Ved vurderingen af, om regionens manglede fjernelse af den automatiserede acceptkommando kan anses som en gyldig digital viljeserklæring, lægger retten vægt på, at det som nævnt må lægges til grund, at Progress Software ikke tog 2019-ændringen som anledning til at iværksætte en opdatering af beskrivelsen af licensvilkårene på GitHub. Retten finder, at den fortsatte mulighed for automatiseret accept sammenholdt med 2019-ændringen og manglende tilpasninger af oplysningerne på GitHub må anses for at have indebåret en vis uigennemsigthed for Region Syddanmark. Den omstændighed, at Region Syddanmark er en professionel part med betydelig erfaring med og indsigt i håndtering af it-systemer kan ikke føre til, at dette ikke indgår som et moment i vurderingen.

Det tillægges også vægt, at 2019-ændringerne indebærer en meget væsentlig ændring af modellen for distribution af Chef Infra, som vil kunne påføre brugere væsentlige betalingsforpligtelser, og at dette ikke gav Progress Software, tidligere Chef Software, anledning til at markere ændringen tydeligt på distri-

butionskanalen GitHub, hvorfra regionen downloadede opdateringer af Chef Infra.

På den anførte baggrund, og efter en samlet vurdering af oplysningerne vedrørende 2019-ændringen og regionens brug af Chef Infra, finder retten, at der ikke foreligger et fuldt tilstrækkeligt grundlag for at anse Region Syddanmark ved undladelsen af at slette den automatiserede acceptkommando at have afgivet en bindende viljeserklæring, hvorved regionen i aftaleretlig henseende tiltrådte Chef EULA'en over for Progress Software.

Ophavsretsloven

Krænkelser

Region Syddanmark har ikke bestridt, at Chef Infra må anses som et værk i ophavsretlig forstand, og Region Syddanmark skal derfor betale et rimeligt vederlag til Progress Software, såfremt regionens brug af Chef Infra uden en licensaftale med Progress Software har udgjort en uagtsom krænkelse af Progress Softwares eneret til at råde over Chef Infra, jf. ophavsretslovens § 83, stk. 1, nr. 1, jf. § 76, stk. 1, nr. 1, jf. § 2, jf. § 1, stk. 3, jf. stk. 1.

Progress Software gør gældende, dels at brug af Chef Infra ifølge Chef EULA'en kræver licens, dels at der foreligger en krænkelse, selvom Chef EULA'en ikke kan anses for at være vedtaget, da brugere af ophavsretligt beskyttet materiale har pligt til at sikre, at brugen er lovlig. Som ovenfor nævnt anser retten ikke Chef EULA'en for at være aftalemæssigt vedtaget mellem parterne. Spørgsmålet er derfor, om Progress Software kan få medhold i det andet delanbringende om, at Region Syddanmark på uagtsom vis har undladt at sikre sig, at regionens brug af Chef Infra ikke indebar en ophavsretlig krænkelse.

Region Syddanmark gør gældende, at der ikke foreligger en ophavsretlig krænkelse, fordi Progress Software på GitHub, hvorfra regionen har downloadet Chef Infra, alene har angivet Apache 2.0.-licensvilkår, der indebærer, at softwaren frit og uden betaling kunne downloades og anvendes, og at regionen derfor ikke har handlet uagtsomt, men derimod i god tro. Det er anført af Region Syddanmark, at siden på GitHub, hvorigennem regionen downloadede Chef Infra, var Progress Softwares, tidligere Chef Softwares, egen side på GitHub, hvilket ikke ses at være bestridt af Progress Software. Heller ikke de skærm billeder fra GitHub, som er fremlagt i sagen, giver holdepunkter for, at andre end Chef Software og senere Progress Software skulle have stået for tilgængeliggørelsen af Chef Infra via GitHub. Retten lægger derfor til grund, at det var Chef Software og Progress Software selv, der stillede de data, regionen downloadede fra GitHub til rådighed.

Bevisførelsen har kun i begrænset omfang givet retten indblik i distributionen af Chef Infra via GitHub, herunder opsætning af siden, vilkår for download fra siden samt navnlig licensangivelser på tidspunktet for tilgængeliggørelsen af de forskellige relevante versioner af softwaren. Der foreligger derfor ikke et tilstrækkeligt grundlag for at slå fast, at Progress Software – i medfør af ophavsretslovens § 53, princippet heri eller en tilsvarende grundsætning – ved at undlade at fjerne eller supplere henvisningen til Apache 2.0.-licensen på GitHub har givet afkald på ophavsretten til fremtidige versioner af Chef Infra, selvom overgangen til en betalingsmodel blev kommunikeret i offentlige meddelelser fra virksomheden andetsteds.

Spørgsmålet er herefter, om Region Syddanmark som anført af Progress Software i perioden mellem april 2022 og 2024 har handlet uagtsomt, og derfor kan pålægges at betale et vederlag efter ophavsretslovens § 83.

I rettens vurdering er det på den ene side indgået, at det af en professionel bruger som regionen, der bruger en software med ophav i et Open Source-miljø og løbende downloader og installerer nye versioner af den, må kunne forventes, at brugeren i relevant omfang sørger for at holde sig ajour med offentlige meddelelser vedrørende softwaren fra softwarens udviklere og andre, herunder med hensyn til retten til at anvende nye versioner af softwaren. Det tillægges således vægt, at 2019-ændringen som nævnt blev annonceret og beskrevet offentligt.

På den anden side har retten lagt vægt på udformningen og klarheden af de offentlige meddelelser i forbindelse med 2019-ændringen, sammenholdt med den omstændighed, at Apache 2.0.-licensen også efter 2019-ændringen forblev anført på GitHub.

Med hensyn til Apache 2.0.-licensen må det således indgå i vurderingen, at denne ifølge sin overskrift regulerer vilkår og betingelser for brug, reproduktion og distribution. Efter licensens definitionsbestemmelse i pkt. 1 forstås ved "licensgiver" ("Licensor") indehaveren af ophavsretten eller en enhed, som er bemyndiget af ophavsretsindehaveren til at tildele licensen, ved "du" ("You") en fysisk eller juridisk person, som udøver de rettigheder, der er tildelt ved licensen, ved "bidragyder" ("Contributor") licensgiveren samt enhver fysisk eller juridisk person, på hvis vegne et bidrag er blevet modtaget af licensgiver og efterfølgende indarbejdet i værket, og ved "værket" ("Work") det ophavsretligt beskyttede værk, uanset om det foreligger i kildekode- eller objektkodeform, der gøres tilgængeligt under licensen, således som angivet ved en ophavsretsmeddelelse, der er indeholdt i eller vedlagt værket.

Af licensens pkt. 2 om tildeling af ophavsretslicens følger, at enhver bidragyder, herunder licensgiver – med forbehold for vilkårene og betingelserne i licensen – giver fysiske og juridiske personer, som udøver de rettigheder, der er tildelt ved

licensen, en tidsubegrænset, verdensomspændende, ikke-eksklusiv, vederlagsfri, royaltyfri og uigenkaldelig ophavsretslicens til at reproducere, udarbejde afledte værker af, offentligt vise, offentligt fremføre, give underlicens og distribuere værket samt afledte værker i både kildekodeform og objektkodeform.

Det fremgår således af Apache 2.0.-licensen, at den har til formål at regulere den ophavsretlige status af værket og navnlig har til formål at give brugere, i licensen omtalt "You", meget vidtgående adgang til at bruge det værk, som licensvilkårssættet knyttes til, uden at licensgiveren skal modtage betaling herfor.

På baggrund heraf fremstår 2019-ændringen med indførelse af en betalingsmodel for fremtidige versioner af softwaren som et meget væsentligt skift. Når dette sammenholdes med, at Apache 2.0.-licens desuagtet forblev angivet på GitHub, følger heraf, at det ved vurderingen af, om Region Syddanmark i den omhandlede periode har handlet uagtsomt, må indgå, hvorvidt de offentlige meddelelser i forbindelse med 2019-ændringen, udover anprisninger af funktionaliteten ved fremtidige versioner og tilhørende support m.v. også indeholdt en tilstrækkelig klar markering af overgangen til kommerciel udnyttelse af ophavsretten til Chef Infra. Et sådant krav om fornøden klarhed må i relevant omfang også stilles, hvor en professionel aktørs uagtsomhed skal vurderes.

Efter en samlet vurdering af de fremlagte blogindlæg, release notes og FAQ's m.v. finder retten, at det nævnte kommercielle skift ikke har været annonceret på en sådan måde, at Region Syddanmark alene ved sin download af Chef Infra fra GitHub, hvor der stadig henvises til Apache 2.0.-licensen, og fortsatte brug af nye versioner af softwaren har handlet uagtsomt

Det er herved indgået, at 2019-ændringen indebar, at ældre versioner ikke blev gjort betalbare, at ændringerne ikke alene indebar, at der skulle betales for fremtidige versioner, men også, at der skulle være andre fordele, herunder support, knyttet til enterprise-versionen, at Region Syddanmark efter det oplyste aldrig benyttede sig af disse fordele, og at meddelelserne blandede omtale af de fortsat ikke-betalbare programmer og de fremover betalbare programmer og sprogligt fortsat knyttede an til begreber, der referer til community-drevet Open Source-software.

Region Syddanmark må imidlertid have fået klarhed om, at 2019-ændringen indebar, at der gjaldt et licenskrav med hensyn til selve brugen af versioner af softwaren, som var gjort tilgængelig efter 2019-ændringen, og som regionen som nævnt brugte, i forbindelse med korrespondancen med Progress Software i 2024, herunder navnlig Maria Trigonis brev af 18. januar 2024 og Niklas Enges mail af 31. januar 2024, hvor de offentlige meddelelser i forbindelse med 2019-

ændringen blev suppleret med uddybende beskrivelser af Chef Infras licens-setup.

Herefter, og henset til det samlede forløb, hvor der bl.a. den 14. februar 2024 i Region Syddanmark blev oprettet en "Change Request", der angav, at "chef klienten skal fjernes da vi bryder licensen", og hvor Chef Infra og CINC ifølge Anders Bigums forklaring i en periode kørte parallelt, finder retten, at regionens anvendelse af Chef Infra i 2024 frem til endelig overgang til CINC har indebåret en uagtsom overtrædelse af Progress Softwares ophavsret.

Vederlaget

Efter navnlig Maria Trigonis forklaring og den fremlagte Chef EULA må det lægges til grund, at licens til brug af Chef Infra tilbydes på årsbasis, og vederlaget for den periode, hvori regionen har overtrådt Progress Softwares ophavsret, må derfor fastsættes svarende til et vederlag for et års brug af de oplyste 2.382 noder, softwaren kørte på. Ved fastsættelsen af dette beløb har retten lagt vægt på navnlig oplysningerne om den sædvanlige listeprijs, det tilbud, Sales Director – EMEA, Collin J Hodgson, fremsendte til Henrik Paulsen ved mail af 26. august 2022, og de af Progress Software fremlagte eksempler på ordrer. Herefter, og efter en samlet vurdering af oplysningerne vedrørende licensbetingelser og prissætning, fastsættes det vederlag, regionen skal betale efter ophavsretslovens § 83, til 242.500 USD.

Den meget væsentlige nedsættelse af beløbet, som Region Syddanmark har anført skal foretages, er der som sagen foreligger oplyst ikke grundlag for.

Henset til navnlig, at Progress Software ved Henrik Enges mail af 31. januar 2024 fortsat søgte at opnå en kommerciel løsning mellem parterne i form af en treårig aftale for årene 2024-2026 og kommunikationen mellem parterne frem til sagsanlægget samlet set, er der ikke grundlag for at forrente kravet forud for sagsanlægget.

Resultat og sagsomkostninger

Resultat

På den anførte baggrund, og efter en samlet vurdering af sagens omstændigheder, tager retten Region Syddanmarks subsidære påstand til følge som nedenfor bestemt.

Sagsomkostninger

Efter sagens udfald må både Progress Software og Region Syddanmark anses for at have vundet sagen for en del, og retten bestemmer efter en samlet vurde-

ring af sagens karakter, udfald og forløb, at Progress Software skal betale delvise sagsomkostninger til Region Syddanmark, jf. retsplejelovens § 313, stk. 1, 1. led.

Retten finder, at sagen må anses for udelukkende eller dog altovervejende at have vedrørt håndhævelsen af intellektuelle ejendomsrettigheder, som er omfattet af Retshåndhævelsesdirektivet (Europa-Parlamentets og Rådets direktiv 2004/48).

Der skal således ved omkostningsfastsættelsen tages hensyn til at sikre, at en væsentlig og passende del af de rimelige udgifter, som den part, der har vundet sagen, har afholdt, bæres af den tabende part, jf. direktivets artikel 14 som fortolket af EU-Domstolen i dom af 28. juli 2016 i sag C-57/15 (United Video Properties).

Fastsættelse i overensstemmelse med de retningslinjer, som følger af direktivet og retspraksis herom, forudsætter dog, at den part, der skal tilkendes sagsomkostninger, har givet fornødne oplysninger om sine udgifter i forbindelse med sagen, herunder særligt om det salær, som den pågældendes advokat har eller vil kræve betalt af den pågældende for sin bistand. Foreligger sådanne oplysninger ikke, kan retten ved fastsættelsen af sagsomkostningerne i al væsentlighed tage udgangspunkt i de principper, der gælder for fastsættelsen af sagsomkostninger i sager, som ikke er omfattet af retshåndhævelsesdirektivet, jf. UfR 2020.2955Ø.

Retten finder i denne sag, at der ikke foreligger de fornødne oplysninger, som er en forudsætning for direktivkonform omkostningsfastsættelse. Der er herved lagt vægt på, at det ikke fremgår af Progress Softwares omkostningsindlæg af 20. maj 2026, hvorvidt og i hvilket omfang hele det anførte beløb til advokatudgifter vil blive faktureret og opkrævet hos Progress Software.

Retten har derfor ved fastsættelsen af sagsomkostningerne i al væsentlighed taget udgangspunkt i de principper, der gælder for fastsættelsen af sagsomkostninger i almindelige civile sager, som ikke er omfattet af retshåndhævelsesdirektivet.

Efter en samlet vurdering, hvori der er indgået bl.a. hensyn til sagens værdi og forløb, fastsættes omkostningsbeløbet til dækning af advokatudgift med 350.000 kr. og til dækning af udgifter til retsafgift med 43.250 kr., i alt 393.250 kr., jf. retsplejelovens § 316.

Beløbet til dækning af advokatudgift er fastsat inklusive moms, idet det er oplyst, at Progress Software ikke er momsregistreret i Danmark.

THI KENDES FOR RET:

Region Syddanmark skal til Progress Software Corporation betale 242.500 USD med tillæg af procesrente fra den 14. maj 2025.

Region Syddanmark skal til Progress Software Corporation betale sagsomkostninger med 393.250 kr.

Beløbene skal betales inden 14 dage.

Sagsomkostningerne forrentes efter rentelovens § 8 a.



Vejledning om anke af Sø- og Handelsrettens dom

Du kan som udgangspunkt anke (klage over) afgørelsen til landsretten.

Du kan i særlige tilfælde anke direkte til Højesteret.

Fristen for anke er **4 uger**, fra Sø- og Handelsretten afsagde dom.

Du kan kun anke bestemmelser om sagsomkostninger særskilt med tilladelse fra Procesbevillingsnævnet. Du skal i givet fald indlevere din ansøgning til Procesbevillingsnævnet. Dette kan ikke ske via minretssag.dk. Fristen for ansøgning om anketilladelse er **4 uger**.

Du kan læse mere om anke og anketilladelse i retsplejelovens §§ 368 – 373.

Reglerne er også kort beskrevet på Sø- og Handelsrettens hjemmeside under "Sagsbehandling og vejledninger", underrubrik "Anke og kære".

Praktiske oplysninger

Du kan oprette en anke direkte på sagen på minretssag.dk ved at trykke på "Opret appel" og derefter vælge "Anke" og følge vejledningen.

Publiceret til portalen d. 14-08-2026 kl. 10:00

Modtagere: Sagsøger Progress Software Corporation, Advokat (H) Peter
Lind Nielsen, Sagsøgte Region Syddanmark, Advokat (H) Søren Christian
Søborg Andersen