

COMMISSION REGULATION (EU) No 63/2011

of 26 January 2011

laying down detailed provisions for the application for a derogation from the specific CO₂ emission targets pursuant to Article 11 of Regulation (EC) No 443/2009 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles⁽¹⁾, and in particular Article 11(8) thereof,

Whereas:

- (1) According to Article 11 of Regulation (EC) No 443/2009 small-volume and niche manufacturers may apply for alternative emissions reduction targets relating to the reduction potential of a given manufacturer's vehicles to reduce their specific emissions of CO₂, and consistent with the characteristics of the market for the types of cars concerned.
- (2) In determining the small-volume manufacturer's reduction potential, the applicant's economic and technological potential should be assessed. For that purpose the applicant should provide detailed information on its economic activities as well as information on CO₂ reducing technologies used in the cars. The information requested include data that is readily available to the applicant and should not entail an additional administrative burden.
- (3) To provide consistency between the reduction target requested from small-volume and niche manufacturers, and in order to avoid putting at a disadvantage the small-volume manufacturers that decreased their average specific CO₂ emissions prior to 2012, the specific CO₂ emission targets for those manufacturers should be compared to their baseline average specific CO₂ emissions in 2007. Where this data does not exist the target should be compared to the average specific CO₂ emissions in the following calendar year closest to 2007.
- (4) In order to take into account the limited product offer of some small-volume manufacturers and resulting limited scope for distribution of the reduction effort over the fleet, the applicants should be allowed to choose between a single yearly specific emission target for the period of derogation or different yearly targets, resulting in reduction from the 2007 baseline at the end of the derogation period.
- (5) Article 11(4) of Regulation (EC) No 443/2009 allows certain niche manufacturers to benefit from an alternative specific emissions target which is 25 % lower than their average specific emissions of CO₂ in 2007. An equivalent specific emissions target based on the best available CO₂-reducing technologies in 2007 should be determined where information on a manufacturer's average specific emissions of CO₂ does not exist for the year 2007. The ratio of maximum power to vehicle mass should be used to distinguish different market characteristics for cars of a given mass for the purpose of identifying the best available CO₂ emissions reduction technologies.
- (6) In order to provide small-volume and niche manufacturers with a clear baseline to be used for setting the specific emissions targets, a list of manufacturers and their average specific CO₂ emissions in the Union in 2007 has been drawn up following a formal consultation with the Member States and the main stakeholders, including the associations of European (ACEA), Japanese (JAMA) and Korean (KAMA) car manufacturers, and European Association of Small Volume Manufacturers (ESCA).
- (7) Certain information contained in the application for derogation should be exempted from public access where disclosure of this information would undermine the protection of commercial interest, in particular information on the manufacturer's product planning, expected costs and impacts on the profitability of the company. The decisions granting derogations will be published by the Commission on the Internet.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee established by Article 9 of Decision No 280/2004/EC of the European Parliament and of the Council⁽²⁾.

HAS ADOPTED THIS REGULATION:

*Article 1***Subject matter**

This Regulation specifies the information to be provided by manufacturers for the purpose of demonstrating that the conditions for a derogation pursuant to Article 11(1) or (4) of Regulation (EC) No 443/2009 are satisfied.

⁽¹⁾ OJ L 140, 5.6.2009, p. 1.

⁽²⁾ OJ L 49, 19.2.2004, p. 1.

Article 2

Definitions

In addition to the definitions set out in Articles 2 and 3 of Regulation (EC) No 443/2009, the following definitions shall apply:

- (a) 'applicant' means a manufacturer within the meaning of Article 11(1) or (4) of Regulation (EC) No 443/2009;
- (b) 'vehicle characteristics' means the features of the vehicle, including mass, its specific CO₂ emissions, the number of seats, engine performance, power to mass ratio and top speed;
- (c) 'characteristics of the market' means information on vehicle characteristics, and names and price ranges of cars directly competing with the vehicles for which a derogation is sought;
- (d) 'own production facility' means a manufacturing or assembly plant used solely by the applicant for the purpose of manufacturing or assembling new passenger cars exclusively for that manufacturer, including, where relevant, passenger cars which are intended for export;
- (e) 'own design centre' means a facility in which the whole vehicle is designed and developed, and which is under the control and exclusive use of the applicant.

Article 3

Application for a derogation pursuant to Article 11(1) and (4) of Regulation (EC) No 443/2009

1. An application for a derogation pursuant to Article 11(1) of Regulation (EC) No 443/2009 shall be submitted by the applicant in accordance with the format specified in Annex I to this Regulation, and shall include the information set out in Article 4(1) and Article 5 of this Regulation.

2. An application for a derogation pursuant to Article 11(4) of Regulation (EC) No 443/2009 shall be submitted by the applicant in accordance with the format specified in Annex II to this Regulation, and shall include the information set out in Article 4(2) and Article 6 of this Regulation.

Article 4

Information on eligibility criteria

1. The applicant shall provide the following information on the eligibility criteria:
 - (a) information on the ownership structure of the manufacturer or group of connected manufacturers, together with the relevant declaration set out in Annex III;
 - (b) for the manufacturer applying for a derogation pursuant to Article 11(1) of Regulation (EC) No 443/2009, or the group of connected manufacturers in accordance with point (b) of Article 11(1) of that Regulation, or for the member of a group of connected manufacturers in accordance with point

(c) of Article 11(1) of that Regulation, the number of passenger cars officially registered in the Union in the three calendar years preceding the date of application, or where such data is not available, one of the following:

- an estimate based on verifiable data of the number of cars registered in the period referred to in point (b) for which the applicant is responsible,
- if no cars were registered in the period referred to in point (b), the number of cars registered in the last calendar year for which such data is available.

2. An applicant applying for a derogation pursuant to Article 11(4) of Regulation (EC) No 443/2009 shall provide the data referred to in point (b) of paragraph 1 of this Article only for the calendar year preceding the date of application.

Article 5

Specific emissions target and reduction potential pursuant to Article 11(2) of Regulation (EC) No 443/2009

1. The applicant shall provide the average specific CO₂ emissions of its passenger cars registered in 2007, unless the average specific CO₂ emissions for that year are listed in Annex IV to this Regulation. Where this information is not available, the applicant shall provide the average specific CO₂ emissions of its passenger cars registered in the following calendar year closest to 2007.

2. The applicant shall provide the following information on its activity:

- (a) for the calendar year preceding the date of application, the number of employees and the size of the production facility in square metres;
- (b) the operational model of the production facility specifying which design and production activities are performed by the applicant or outsourced;
- (c) in the case of a connected undertaking, if the technology is shared by the manufacturers, and which activities are outsourced;
- (d) for five calendar years preceding the date of application, the sales volumes, yearly turnover, net profit, and R & D spending, and in the case of a connected undertaking, the net transfers to the parent company;
- (e) the characteristics of their market;
- (f) the price list for all versions of cars to be covered by the derogation in the calendar year preceding the date of application, and the expected price list for the cars planned to be launched and to be covered by the derogation.

When an application is submitted by a manufacturer responsible for more than 100 cars per year, the information referred to in point (d) shall be accompanied by the official certified accounts, or shall be certified by an independent auditor.

3. The applicant shall provide the following information on its technological potential:

- (a) the list of CO₂ reducing technologies used in its passenger cars deployed on the market in 2007 or, where those data are not available, for the following year closest to 2007, or in case of manufacturers planning to enter the market, for the year in which the derogation starts to apply;
- (b) the list of CO₂ reducing technologies used in its passenger cars under the reduction programme and the additional costs of these technologies for each vehicle version covered by the application.

4. The applicant shall in accordance with its reduction potential propose a specific emissions target for the period of the derogation. The applicant may also propose yearly specific emissions targets.

The specific emissions target or yearly specific emissions targets shall be determined so that the average specific emissions at the expiry of the derogation period are reduced in comparison to the average specific emissions of CO₂ referred to in paragraph 1.

5. The specific emissions target or yearly specific emissions targets proposed by the applicant in accordance with point (d) of Article 11(2) of Regulation (EC) No 443/2009 shall be accompanied by a programme of reduction for the new fleet's specific CO₂ emissions.

The reduction programme shall specify the following:

- (a) the timetable for introduction of CO₂ reducing technologies in the applicant's fleet;
- (b) the estimated Union registrations per year for the period of the derogation and the expected average specific emissions of CO₂ and average mass;
- (c) in the case of yearly specific emissions targets, yearly improvement of specific CO₂ emissions of the vehicle versions for which CO₂ reducing technologies are introduced.

6. The applicant's compliance with a specific emissions target or yearly specific emissions targets shall be assessed in accordance with Article 9 of Regulation (EC) No 443/2009 each year during the derogation period.

Article 6

Reduction target for a derogation pursuant to Article 11(4) of Regulation (EC) No 443/2009

1. The applicant shall provide the average specific CO₂ emissions of its passenger cars registered in 2007, unless the average specific CO₂ emissions for that year are listed in Annex IV to this Regulation.

2. The reduction target determined in accordance with Article 11(4) of Regulation (EC) No 443/2009 shall apply in relation to the baseline average specific CO₂ emissions as set out in paragraph 1.

3. Where information on a manufacturer's average specific CO₂ emissions in 2007 does not exist, the applicant shall provide information on the vehicle characteristics for all types of cars manufactured by him as well as the number of cars manufactured by the applicant that the applicant expects to be registered in the Union in the first year of the derogation. The applicant shall indicate for all variants of cars to which of the vehicle classes specified in the table in Annex V the variant belongs.

4. The specific emissions target shall be calculated annually based on the 25 % reduction from the baseline for each vehicle class set out in Annex V.

Article 7

Assessment by the Commission

1. Where the Commission has raised no objections within nine months of official receipt of a complete application pursuant to Article 11(1) or Article 11(4) of Regulation (EC) No 443/2009 the relevant conditions for applying the derogation shall be deemed to be satisfied. If the Commission finds that the application is incomplete, additional information may be requested. Where the additional information is not submitted within the time period specified in the request, the Commission may reject the application.

In the case of a rejection due to the incompleteness of the application or due to the Commission finding the proposed specific emissions target inconsistent with the applicant's reduction potential, the applicant may submit a completed or revised application for a derogation.

2. Applications shall be sent in printed and electronic versions and be addressed to the Secretariat General of the European Commission, 1049 Brussels, Belgium, marked 'Derogation under Regulation (EC) No 443/2009'. The electronic version shall be also sent to the functional mailbox specified in Annex I.

3. Where information contained in the application is found to be incorrect or inaccurate, the decision to grant a derogation shall be revoked.

Article 8

Public access to information

1. An applicant that considers that information submitted in the application should not be disclosed in accordance with Article 11(9) of Regulation (EC) No 443/2009 shall indicate this in the application and justify why disclosure would undermine the protection of the commercial interests of the applicant, including intellectual property.

2. The exception from the right to public access to documents set out in Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁽¹⁾ shall be deemed to apply to the following types of information:

- (a) details of the reduction programme referred to in Article 5, and in particular details concerning the development of the manufacturer's product portfolio;

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

- (b) expected impacts of CO₂ reducing technologies on the production costs, purchase prices of vehicles and profitability of the company.

Article 9

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 January 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Standard format of the application for a derogation to be submitted by manufacturers meeting the criteria of Article 11(1) of Regulation (EC) No 443/2009

The electronic version of the application shall be sent to the following email address:

EC-CO2-LDV-IMPLEMENTATION@ec.europa.eu

1. Name, address and contact person for the manufacturer or group of connected manufacturers

Names of manufacturer	Postal address	Contact person name	Contact person email	Contact person telephone number

2. Eligibility criteria

2.1. Is the applicant part of a group of connected manufacturers?

- YES (declaration set out in Annex III to be attached)
- NO

2.2. Is the applicant part of a group of connected manufacturers but operates its own production facilities and design centre?

- YES (declaration set out in Annex III to be attached; see point 2.3)
- NO (see point 2.4 and 2.5)

2.3. Number of registrations in the Union if the application refers to an unconnected manufacturer or connected manufacturer that operates its own production facilities and own design centre:

2.3.1. Official figure in three calendar years preceding the date of application

Year			
Number of EU registrations			

2.3.2. Where the official figure referred to in point 2.3.1 is not available for the period referred to therein, an estimate based on verifiable data

Year			
Number of EU registrations			

2.3.3. Where the figures in point 2.3.1 and 2.3.2 are not available for that period, the figures for the last calendar year for which such data is available

Year	
Number of EU registrations	

2.4. If the application refers to a group of connected manufacturers please provide the following:

Names of manufacturer	Postal address	Contact person name	Contact person e-mail	Contact person telephone number

2.5. Number of registrations in the Union of a group of connected manufacturers if the application refers to a group of connected manufacturers and the applicant does not operate its own production facilities and own design centre:

2.5.1. Official figure in three calendar years preceding the date of application

Year			
Number of EU registrations			

2.5.2. Where the official figure referred to in point 2.5.1 is not available for the period referred to therein, an estimate based on verifiable data

Year			
Number of EU registrations			

2.5.3. Where the figures in point 2.5.1 and 2.5.2 are not available for that period, the figure for the last calendar year for which such data is available

Year	
Number of EU registrations	

3. **Requested duration of the derogation**

Number of calendar years (maximum 5)	
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4. **Proposal for a specific emissions target calculated as fleet average for the period of derogation or separate specific emissions targets in case of yearly reductions (in g CO₂/km)**

Year					
Average specific emission target (g CO ₂ /km)					

5. **Company specific information**

5.1. Average specific emissions of CO₂ in 2007 if not included in Annex IV (or if not available in the following calendar year closest to 2007)

5.2. Number of employees in the calendar year preceding the date of application

5.3. Size of the production facility in square metres in the calendar year preceding the application

5.4. Sales volumes for five years preceding the date of application

Year					
Sales volumes					

5.5. Yearly turnover for five years preceding the date of application

Year					
Turnover					

5.6. Characteristics of the market

Information on planned products, not available on the market at the time of the application, should be provided in the confidential section of this application.

(a) the vehicle characteristics;

(b) the names and price ranges of directly competing vehicles in the year preceding the date of application;

- (c) the price list of vehicles that are to be covered by the derogation in the calendar year preceding the date of application or in the closest year to the date of application.

5.7. Brief description of the operational model of the production facility

CONFIDENTIAL SECTION OF THE APPLICATION

5.8. Net profit for five years preceding the date of application

Year					
Net profit					

5.9. R & D spending over five years preceding the date of application

Year					
R & D spending					

5.10. Net financial transfers to the parent company in case of connected undertakings during five years preceding the date of application

Year					
Net transfers					

6. **Details of the passenger cars to be launched on the Union market for which the applicant will be responsible**

6.1. Characteristics of the market

6.1.1. Vehicle characteristics;

6.1.2. Names and price ranges of directly competing vehicles in the year preceding the date of application;

6.1.3. Expected price list of vehicles to be covered by the derogation.

7. **Applicant's technological potential**

7.1. List of CO₂ reducing technologies deployed in the applicant's fleet in 2007;

7.2. Where the list referred to in point 7.1 is not available, the list for the following year closest to 2007;

7.3. In case of applicants planning to enter the Union market, the list referred to in point 7.1 should be provided for the first year of the derogation.

8. **Applicant's reduction programme**

8.1. Timetable for deployment of CO₂ reducing technologies in the fleet;

8.2. Expected fleet average during the period of derogation:

8.2.1. Union registrations per year during the period of derogation

8.2.2. Expected average mass of vehicles to be launched on the Union market

8.2.3. Expected average specific CO₂ emissions of vehicles to be launched on the Union market

8.3. CO₂ reducing technologies to be deployed in the applicant's fleet under the reduction programme;

8.4. The additional costs per vehicle version of the technologies to be deployed as part of the programme;

8.5. In the case of yearly targets, yearly improvement of specific CO₂ emissions of the vehicle versions for which CO₂ reducing technologies are introduced.

ANNEX II

Standard format of the application for derogation to be submitted by manufacturers meeting the criteria of Article 11(4) of Regulation (EC) No 443/2009

PUBLIC SECTION OF THE APPLICATION

1. Name, address and contact person for the manufacturer or group of connected manufacturers

Names of manufacturer	Postal address	Contact person name	Contact person e-mail	Contact person telephone number

2. Eligibility criteria

2.1. Is the applicant part of a group of connected manufacturers?

YES (declaration set out in Annex III to be attached; see point 2.3)

NO (see point 2.2)

2.2. Number of registrations in the Union if the application refers to unconnected manufacturer:

2.2.1. Official figure in the last calendar year preceding the date of application

Year	
Number of EU registrations	

2.2.2. Where the official figure referred to in point 2.2.1 is not available for the period referred to therein, an estimate based on verifiable data

Year	
Number of EU registrations	

2.2.3. Where the figures in point 2.2.1 and 2.2.2 are not available for that period, the figure for the last calendar year for which such data is available

Year	
Number of EU registrations	

2.3. If the application refers to a group of connected manufacturers:

2.3.1. The names of connected manufacturers

2.3.2. The number of registrations in the Union in the calendar year preceding the date of application of a group of connected manufacturers

Year	
Number of EU registrations	

2.3.3. Where the figure referred to in point 2.3.2 is not available, the figure or an estimate based on verifiable data for the last calendar year for which such data is available

Year	
Number of EU registrations	

3. **Details of the passenger cars for which the applicant is responsible**

Information on planned products, not available on the market at the time of the application, should be provided in the confidential section of this application.

- 3.1. Average specific CO₂ emissions in 2007 if not included in Annex IV to this Regulation
- 3.2. If data for 2007 is not available, the following:
 - (a) registrations in the Union, or an estimate based on verifiable data if official figures not available at the time of application, in the calendar year closest to 2007;
 - (b) the vehicle characteristics for all types of cars;
 - (c) the list of cars grouped per vehicle class as set out in Annex V.

4. **Specific emissions target of 25 % reduction from the 2007 baseline**

CONFIDENTIAL SECTION OF THE APPLICATION

5. **Details of the passenger cars to be launched on the Union market by the applicant (concerns manufacturers not included in Annex IV)**
 - 5.1. Vehicle characteristics of all cars
 - 5.2. List of cars grouped per vehicle class as set out in Annex V
 - 5.3. Expected EU registrations of vehicles in the first year of the derogation
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ANNEX III

Standard format of the declaration stating the structure of ownership*Article 11(1)(a) of Regulation (EC) No 443/2009*

I hereby declare that I am legally empowered to represent [name] (the manufacturer) applying for a derogation as foreseen in Article 11(1) of Regulation (EC) No 443/2009 which is not part of a group of connected manufacturers as defined in Article 3(2) thereof. To the best of my knowledge the [name] (the manufacturer) is eligible to apply for a derogation as foreseen in Article 11(1) of Regulation (EC) No 443/2009 and that the information contained in the application is true and accurate. Information on the ownership structure of [name] (the manufacturer) is annexed.

Signature Date

Director of [manufacturer]

Article 11(1)(b) or 11(4)(a) of Regulation (EC) No 443/2009

I hereby declare that I am legally empowered to represent [name] (the manufacturer) applying for a derogation as foreseen in Article 11[(1)] [(4)] (*) of Regulation (EC) No 443/2009 which is part of a group of connected manufacturers as defined in Article 3(2) thereof. To the best of my knowledge the [name] (the manufacturer) is eligible to apply for a derogation as foreseen in Article 11[(1)] [(4)] (*) of Regulation (EC) No 443/2009 and that the information contained in the application is true and accurate. Information on the ownership structure of [name] (the manufacturer) is annexed.

Signature Date

Director of [manufacturer]

Article 11(1)(c) of Regulation (EC) No 443/2009

I hereby declare that I am legally empowered to represent [name] (the manufacturer) applying for a derogation as foreseen in Article 11 of Regulation (EC) No 443/2009 which is part of a group of connected manufacturers as defined in Article 3(2) thereof but operates its own production facilities and design centre as defined in Article 2 of Commission Regulation (EC) No 000 To the best of my knowledge the [name] (the manufacturer) is eligible to apply for a derogation as foreseen in Article 11[(1)] of Regulation (EC) No 443/2009 and that the information contained in the application is true and accurate. Information on the ownership structure of [name] (the manufacturer) is annexed.

Signature Date

Director of [manufacturer]

(*) Identify the applicable paragraph.

ANNEX IV

List of Union average specific CO₂ emissions in 2007 per manufacturer

Manufacturer	Average emissions [g/km]	Manufacturer	Average emissions [g/km]
AIXAM	164,000	HONDA	157,613
ALPINA	219,932	HYUNDAI	162,046
AM GENERAL	357,000	ISUZU	176,133
ASTON MARTIN	377,860	IVECO	224,770
AUDI	184,752	JAGUAR	208,219
AUSTIN	450,000	KIA	157,239
AUTOMOBILES DANGEL	153,000	LAMBORGHINI	424,087
AVTOVAZ	216,632	LAND ROVER	250,399
BEAUFORD	208,000	LOTUS	208,399
BENTLEY	411,664	MAGYAR SUZUKI	156,280
BMW	171,684	MASERATI	354,687
BRABUS	246,000	MAZDA	172,568
BRONTO	233,000	MG	186,801
BUGATTI	577,667	MICHALAK	117,000
CATERHAM	236,088	MICROCAR	178,000
CHRYSLER	226,141	MITSUBISHI	174,649
CITROEN	142,536	MK SPORTSCARS	117,000
DACIA	154,650	MORGAN	202,324
DAIHATSU	153,070	NETHERLANDS CAR	141,061
DAIMLER	182,524	NISSAN	168,408
DIAMOND	260,000	OPEL	153,699
DONKERVOORT	194,000	OSV	135,915
DR MOTOR COMPANY	193,048	PERODUA	138,135
FERRARI	434,860	PEUGEOT	142,205
FIAT	141,496	PGO	201,767
FORD	149,343	PILGRIM	193,000
FUJI HEAVY INDUSTRIES	219,488	PORSCHE	287,710
GEELY	183,000	PROTON	155,185
GENERAL MOTORS	159,604	QUADZILLA	176,000
GM DAEWOO	160,071	QUATTRO	290,774
GUMPERT	342,000	RENAULT	146,893
GWM	253,480	ROLLS ROYCE	394,526
HC & E	220,000	ROVER	188,399

Manufacturer	Average emissions [g/km]
RUF	327,000
SAAB	190,444
SALVADOR CAETANO	224,000
SANTANA	165,965
SEAT	151,184
SHUANGHUAN	270,000
SKODA	149,387
SOVAB	233,822
SSANGYONG	223,430
SUZUKI	166,012

Manufacturer	Average emissions [g/km]
TATA	168,310
TIGER	244,000
TOYOTA	150,634
TVR	397,500
UAZ	314,000
VM	185,000
VOLKSWAGEN	162,152
VOLVO	189,616
WIESMANN	310,000

ANNEX V

Baseline emissions based on the 2007 best available technology and 25 % reduction target of specific emissions of CO₂ for each vehicle class

Vehicle class	Mass ⁽¹⁾ class	Power to mass class	Baseline emissions [g/km]	CO ₂ target [g/km]
1	1	low	108	81
2	1	medium	118	89
3	1	high	153	115
4	2	low	119	89
5	2	medium	138	104
6	2	high	153	115
7	3	low	121	91
8	3	medium	136	102
9	3	high	150	113
10	4	low	131	98
11	4	medium	144	108
12	4	high	162	122
13	5	low	147	110
14	5	medium	152	114
15	5	high	179	134

⁽¹⁾ Mass in running order as defined in Regulation (EC) No 443/2009.

— The mass classes correspond to the following (rounded to the nearest integer):

Mass class	Range [kg]
1	0-1 225 kg
2	1 226-1 375 kg
3	1 376-1 475 kg
4	1 476-1 625 kg
5	1 626+ kg

— The power to mass classes correspond to the following (rounded to the nearest integer):

Power to mass class	Range [W/kg]
Low	0-65 W/kg
Medium	66-85 W/kg
High	86+