

Introduction

1. The aim of this *Green Paper* is to provide a study of intermediate local governments and, in particular, the provincial councils in Spain. Such an analysis is urgently required, as after more than 30 years of constitutional development, it has become clear that the local institutional system is still a matter of unfinished business in our constitutional model from the territorial perspective. These pages provide a diagnosis of the current situation in intermediate local governments, as well as a large number of proposals or suggestions to be considered as options when implementing the reforms required in local government.

2. A large number of reasons could be given to explain why the local government institutional system (and, the topic of interest here, intermediate local governments), has not been completely closed, or to be more precise, is still an open process. Also, as will be seen, there are numerous unknown factors and uncertainties regarding the future of these levels of intermediate local governments. This report discusses, if not all, then, at least, the most important of these.

3. On a strictly methodological level, it should be stressed that this *Green Paper* has an essentially institutional focus. Both its content and conclusions and recommendations are aimed principally at civil society (i.e. the Spanish public, the end receivers of all political-administrative activity at this level of government), as well as the political representatives and leaders of central, autonomous and local structures.

4. At this critical time for Spain, at the start of the second decade of the 20th century, one cannot ignore the fact that certain political proposals have called into question the current basis and structure of local governments and, with of more relevance to this paper, particularly, there are voices that raise doubts about the role of the provincial councils as organs of provincial government and administration under the *regimen general* or Spanish general system¹.

5. These proposals have been launched without the necessary calm and reflection that a modification of the institutional architecture of this nature requires. It is also true that the constant, intense pressure from 'the markets' on the complex situation of the Spanish economic-financial system (and, in particular, the 'sovereign debt') during 2010 has uncovered a wide and improvised catalogue of 'solutions' to these challenges. And among these solutions, as is well known, are ones involving redesigning the municipal map and questioning certain levels of local government in Spain.

6. The purpose of the *Green Paper* is not to run away from debate, but it needs to be clear from the start that the scope of this report goes way beyond this contingent debate and is based more on strategy

¹ [Translator's note. This is the system of government applicable to most of the Spanish provinces (provincial councils); the exceptions are: the Balearic Isles (island councils), the Canary Isles (island councils known as *cabildos*) and the Basque Country and Navarre, whose provincial councils are governed by the *regimen foral*.]

than conjecture, while also providing a diagnosis of the current situation. Institutional reform in Spain and, of more relevance to this paper, the reform of local governments, is a strategic need of the first order (in other words, a 'structural reform') to redesign the system of distributing territorial responsibilities, thus making the country much more institutionally competitive and, consequently, strengthened in terms of economic, social and political development.

7. Indeed, political institutions are also 'social infrastructures' which tangibly contribute to a country's economic development. And in this light, everything that strengthens intermediate local government institutions will also have the indirect effect of strengthening the political system and the economy, as well as the wellbeing of the citizens themselves.

8. Having said this, one needs to be fully aware that the institutional nature of intermediate local governments is, in many respects, fragile. This is particularly so in the case of provincial or 'general system' councils. This institutional fragility is particularly notable in its effect on democratic legitimacy, the distribution of powers and the funding system. As will be seen, to this institutional fragility must be added the inexistence of a common template for the provincial councils (in organisational, not institutional terms), as under the guise of a uniform system there are substantial differences in distribution of powers and organisation.

9. It is true that this does not occur, or only to a lesser extent, in other forms of intermediate local government (such as historical territories and the Balearic and Canary Island councils), which have stronger institutions, both in terms of the direct democratic legitimacy of their representative bodies and in terms of their wide range of powers and organisational design. For the moment, we shall leave to one side the also substantial differences in their funding models (at least with regard to the historical Basque territories and the *Comunidad Foral* of Navarre).

10. Conceptually, it is worth distinguishing between two basic types of intermediate local government: firstly, those that are firmly based in the Constitution itself (i.e. those that are based on constitutional recognition of the province or island); and, secondly, all intermediate local governments that have arisen out of the general provisions in the text of the constitution, regulations that are specified to varying degree in statutory texts and legal creations. The former (except in the case of constitutional reform) are untouchable by the legislator, while the latter, unless recognised by statutes, are accessible through legislation. To simplify, one may refer to 'first-level' and 'second-level' intermediate local governments, at least with regard to their constitutional guarantees.

11. The main subject of this *Green Paper* is 'first-level' intermediate local government (provincial councils, historical Basque territories and the Balearic and Canary Island councils). And within these intermediate local governments, it should be made clear that the main focus of attention and most of the proposals in this report are aimed at the reality of the general system provinces and, more specifically, the provincial councils. This report does not look at the unique case of the *consells de vegueria*², included in the Statute of Autonomy of Catalonia and recently developed by laws passed by the Catalan Parliament. The unequivocal terms of Sentence 31/2010, applying this reality to the provinces (and the provincial councils) and reserving for the state legislator the definition of the electoral system, the institutional organisation and (to a large extent) the funding system, means this level of government tends to be subsumed by the provincial councils (although their representative bodies are to be known as *consells de vegueria* in the near future).

12. The last part of the *Green Paper* briefly analyses other institutional realities in 'first-level' intermediate local governments other than the general-system provincial councils, as their form of government and

² [Translator's note. This is the name of the provincial councils after the administrative redistribution of Catalonia.]

system of power distribution is a good reference point for how these levels of intermediate local government are evolving in relation to the traditional master model. However, it must be asked to what extent these institutional structures are strictly speaking 'intermediate local governments' or something distinct (a key case here are the historical Basque territories, which differ significantly from the configuration of these local bodies, but the Balearic and Canary Island councils also have significantly unique features).

13. Autonomous communities consisting of a single province should be treated differently. These are not, strictly speaking, a level of intermediate local government, although the old provincial council functions have been 'integrated' into their powers. To put it another way, the single-province autonomous communities are bodies completely different in nature to strictly local ones, although they absorbed the 'province' as a local body. This, though, is not through the Constitution but the express decisions of the ordinary state legislator (Law on the Autonomous Process) and basic legislation, although with clear precedents in some (not all) of the single-province autonomous community statutes of autonomy.

14. What is termed here, simplified to some degree, as 'second-level' intermediate local government is also the subject of this *Green Paper*. These are sometimes (at least potentially) authentic local government levels and other local intermediate bodies, whose effective coordination depends on a variety of circumstances, some legal (metropolitan areas and regions) and others based on the wishes of the local bodies that constitute them (consortiums and associations of municipalities).

15. For the purposes of this report, the point of interest in these 'second-level' intermediate local governments lies in the problems of coordination arising between the province as a local body and the aforementioned structures of second-level intermediate local government (or bodies). This is not only a problem of 'institutional coexistence', but also, more

particularly, one of distributing attributes in what may be termed a multi-coloured map of local structures interspersed with more than evident high transaction costs and fiscal impacts.

16. A report on intermediate local governments in Spain must bear in mind this 'plural institutional reality' and, thus, be capable of identifying the deficit represented by this model both in the distribution of power and in institutional organisation and funding. The diagnosis of the current state of intermediate local governments is a key element in order to formulate specific measures for improvement and, above all, to attempt to create a definitive territorial organisation in Spain.

17. And, to this end, it should be remembered here that the Democracy and Local Government Foundation has distributed a survey to all 'first-level' intermediate local governments (except the single-province autonomous communities, as these cannot be considered as such), the main aim of which is to produce a picture, however approximate, of the current situation at these levels of intermediate local government with regard to three points: a) the organisation and personnel structure of these bodies; b) the services provided as priorities; and c) the expenditure structure of these intermediate local governments.

18. The Democracy and Local Government Foundation would like to express its gratitude for the excellent response to this survey, both on the part of the bodies that are on the Foundation's board and those that are not. The results obtained provide a significant sample which, at the very least (as reflected in the different sections of this report) permits the diagnosis, conclusions and recommendations of this report to be drawn up on an empirical basis or 'platform', and, therefore, to frame them within the 'institutional reality' that can occasionally be somewhat removed from the regulatory texts themselves. Having said this, the urgency with which *Green Paper* has been written has prevented a full statistical study and comprehensive analysis of the data from being presented. This is now being prepared

by the Foundation and will be published as an appendix to this report in the forthcoming months.

19. Clearly, the diagnosis should be accompanied by proposals. The idea that drives the reflections in this *Green Paper* is none other than the strengthening of the institutional quality of our intermediate local governments, with the aim of structuring a rational system for distributing responsibilities over the different territorial levels of government, boosting the implementation of effective and efficient government and administrative structures and guaranteeing sufficient funding for these levels of government so that they can provide these services properly with the end goal of ensuring that the public (either directly or through the municipalities) receives better public services.

20. Therefore, the report does not seek 'self-satisfaction' regarding our current intermediate local governments. This report demonstrates in detail how the road towards institutional improvement is a wide one. And this is a necessity, given that the main basis for the production of this *Green Paper* is none other than a belief in the 'reinventing or reestablishment' (we may also term the process 'updating') of the provincial councils and other intermediate local governments in Spain, with the idea of making these institutions a paradigm of good government and good administration, competing efficiently in the institutional market and at the forefront of economic and social development in the territories. All these are circumstances that must qualitatively improve the position of the public, as the end receivers of the governmental actions of these institutions.

21. The current panorama provided by intermediate local governments is the result of many years' (over 30) contingency and, to a degree, improvised government. It is also the result, as will be seen, of their long and eventful historical process. The lack of collective reflection on this specific point is highly illustrative. It is true that the Expert Committee report of 1981 discussed the role of the province within the framework of the (at that time) 'slow-route' statutes of autonomy. It is

also the case that in 2005 the Ministry of Public Administrations promoted a *White Paper on Local Government Reform*, which included the specific treatment of the province as a local body. And, finally, in 2007, the Democracy and Local Government Foundation, together with Barcelona Provincial Council, published a number of reflections from an internal, comparative point of view whose subject was intermediate local government.

22. But despite these important contributions and others from different forums and institutions, the members of the Democracy and Local Government Foundation, on 9 September 2010, saw the need, at that time, to promote a reflection with an institutional scope, analysing specifically the role of intermediate local governments in Spain and drawing conclusions and recommendations to highlight the value of the provincial councils and other intermediate local governments in the autonomous communities, as well as introducing into the political agenda the need to strengthen this intermediate level institutionally, with the aim of effectively reinforcing the local government system in Spain.

23. It is also true, and should not be born in mind at this time, that the province as a local entity has been the subject of numerous, extremely relevant academic studies from the perspective of public law and, in particular, administrative law. Indeed, the doctrine of administrative law (and, to a much lesser extent, constitutional law and public finance) has made important contributions to the analysis of the province in the constitutional and statutory framework. Rigorous academic collective and individual works have been produced specifically discussing the province, as well as numerous articles and studies on the same topic. As far as possible, these important contributions have been taken into account in the writing of this report.

24. Thus to greater or lesser extent, this *Green Paper* combines a series of approaches in the analysis of this institutional reality. Indeed, notwithstanding that the legal-constitutional and administrative analysis will

undoubtedly play a part in the development of this report, the current situation in Spanish intermediate local governments cannot be fully understood without specific reference to their historical formation process, as well as the through a necessary comparison of 'our model' of intermediate local governments with those in other European Union countries. In any event, the definition of the constitutional (and statutory) scope of provincial autonomy is also a first step to a proper understanding of the issue.

25. The *Green Paper* also aims to approach an institutional analysis from the perspective of the form of government (electoral system and institutional system) and its organisation, stressing the problems regarding qualified public employment that is essential at this level of intermediate local government for its functions to be carried out.

26. Together with the above, the necessary focus on power distribution (which is at the epicentre of the reflections and proposals given here) is complemented by a number of references, albeit succinct, to the public policies currently being implemented by provincial councils. And, indeed, a report on intermediate local governments cannot overlook the key issue of funding, which, notwithstanding its individual treatment in a specific section in this *Green Paper*, is present at different points in the report. There can be no doubt that this pairing of issues (powers/funding) is the basis of the institutional redesign (and possibly strengthening) of intermediate local governments and, in particular, the provincial councils.

27. A large number of people have participated, directly or indirectly, in producing this report, and are expressly acknowledged in the Appendix. Many of them prepared initial papers which were later developed by the coordinators, the Foundation's Horizon Scanning Group and, in particular, the writers of the report. However, it should be stressed here that although the *Green Paper* was commissioned from the Foundation and is based on the abovementioned papers, the authorship of the report, and thus both its hits and

misses, belongs to a small group of people who participated directly in producing its final draft and to the coordinators of this report, for the parts designated to them.

28. As previously stated, the *Green Paper* was produced from a large number of contributions on specific topics, written by numerous university lecturers, experts, top civil servants, intermediate local government managers and magistrates. In any event, the contents of the *Green Paper* is not binding to the contributors, as their reflections, opinions and judgements have in some cases been faithfully followed, in others only to a limited extent and on a few specific occasions, the report has distanced itself from these points of view. However, this report would not have been possible without their important contributions. The *Green Paper* writing and coordination team would like to express their thanks for all these contributions, which had to be prepared at very short notice. It is also the aim of the Democracy and Local Government Foundation, once the *Green Paper* has been published, to disseminate these important contributions in order to further enrich debate on the issue.

29. Furthermore, it is clear and should be acknowledged here that the writing of the *Green Paper* would not have been possible without the important contribution of members of the Horizon Planning Group for provincial councils, set up within the Democracy and Local Government Foundation at the start of 2010. Made up of qualified civil servants and top-level directors from a number of provincial councils, it was a key element in intelligently combining the conceptual frameworks of the problem with the generally unknown institutional reality. Its work as a true strategic reflection group, its important conceptual and empirical contributions and, above all, its work in reviewing and enriching the report and producing the final draft of the conclusions and recommendations were extremely important in the process of producing this report.

30. In the light of the above, it should be absolutely clear that the Democracy and Local Government

Foundation and, more specifically, its members may not necessarily agree with all the content, proposals or critical diagnoses contained in the *Green Paper*. The reality of intermediate local governments is highly plural and it is often, quite frankly, difficult (if not impossible) to mould it into uniform parameters of analysis. What the Democracy and Local Government Foundation does take responsibility for are the *Green Paper*'s 'Conclusions' and 'Decalogue of Recommendations' because, as stated above, they were produced by an expert group set up by the Foundation, including directors and top civil servants from different intermediate local governments.

31. In brief, the *Green Paper* is intended as an instrument for reflection to open a calm, rational and productive debate on the current state and future perspectives of the provincial councils and other intermediate local governments in Spain, with the end goal of collaborating in the required proposals for the reform of the Spanish institutional system, aimed at rationalising the dysfunctions in the current model. In any event, the starting point of this report is clear: intermediate local governments (and, in particular, the provincial councils) are essential and a necessity as a means, firstly, to strengthening local autonomy and, secondly, to providing better public services.