Will the European Regulation allow English citizens to avoid continental rules of forced heirship?

1. Definition of forced heirship in France

According to article 912 of the French Civil Code, “the hereditary reserve is the part of the estate which the law states must be inherited by certain heirs.”

According to article 913 of the French Civil Code, “when there is one child, the reserve is equal to ½ [of the estate], when there are two children, the reserve is equal to 2/3 [of the estate]; and when there are three children or more, the reserve is equal to ¾ [of the estate].”
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2. Rules that apply today in both France and England:

- For immovable properties: the rule « lex rei sitae » applies: the law applying to the succession is the law of the country where the properties are located.
  
  Potentially, there are as many succession laws as there are properties in different countries.

- For movable (e.g. liquid) assets:
  
  - under French law, the law that will apply to the inheritance will be the law of the deceased person’s last domicile.
  
  - under English law, the law that will apply is the law of the domicile of origin of the deceased person

Example:

Inheritance of an English citizen domiciled in England who has liquid assets in both France and England and real estate in both France and England.

He passes away in England.

- English law applies to - Real estate located in England and all liquid assets

- French law applies to - Real estate located in France
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3. Applicable law according to the European Regulation

a) General rule:

According to article 21, “the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.”

Example:
A German citizen passes away in Germany where she had her last habitual residence. She had movable and immovable assets in both France and Germany.
- German law applies to – the entire estate including all assets in both France and Germany.

3. Applicable law according to the regulation

Example:
An English citizen domiciled in England has financial and liquid assets in both France and England.
He passes away in England.

Analysis of the rules of conflict of law

- Under the European Regulation:
  - English law applies to - the whole estate

- Under English law
  - English law applies to – all liquid assets and real estate located in England
  - French law applies to - real estate located in France
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3. Applicable law according to the regulation

Article 34 of the Regulation applies as England has opted out

- According to article 34, “the application of the law of any third State specified by this regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a renvoi to the law of a member State or to the law of another third State which would apply its own law.”

Therefore, French law will apply to the succession of the immovable assets situated in France and French rules on forced heirship will apply.

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3. Applicable law according to the Regulation

b) Choice of law

According to article 22 of the Regulation: “a person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.”

Example:

An English citizen domiciled in France who possesses liquid assets in both France and England and real estate in both France and England passes away in France.

In his will, he chooses English law to govern his succession and leaves all of his estate to his wife.

He has a child from a previous marriage.
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3. Applicable law according to the Regulation

- Analysis of the rules of conflict of law
  - Under English law:
    - English law applies to – all liquid assets in both France and England and all real estate assets located in England
    - French law applies to – all real estate assets in France
  - Under the European Regulation:
    - English law applies to - the whole estate; the renvoi to French law regarding real estate will not be accepted (article 34-2 of the European Regulation)

Therefore, English law could apply to the whole estate, including to the real estate located in France

b) Public policy (ordre public)

Is it possible to refuse the application of English law on the basis of article 35 of the Regulation, which states that “the application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum”?

Despite the negative wording, this does mean that the application of such law can be refused if it is manifestly incompatible with the public policy of the forum.
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3. Applicable law according to the European Regulation

b) Public policy (ordre public)

• In other words, is forced heirship part of public policy? If so, the judge will be in a position to refuse to apply such law and will apply instead the law of his own country.