

AI in Construction Projects

CMS Insurance Group Webinar | 8 September 2026

EXECUTIVE SUMMARY

Panel

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Regulatory Readiness — Where Do We Stand?

- **EU AI Act (Regulation (EU) 2024/1689)** is the central regulatory anchor: risk-based classification, extraterritorial reach, obligations on providers, deployers, importers and distributors.
- **Italy — Law No. 132/2025** (in force 10 October 2025): dedicated national AI law. Article 13 requires AI to be used only as a support tool in intellectual/technical professions; the professional's contribution must remain predominant; clients must be informed of AI use.
 - **Two implementing decrees** (4 August 2026): (i) civil/criminal liability for AI — access to technical documentation, causation presumptions, direct action against insurers; (ii) national governance framework — AgID as notifying authority, ACN as market surveillance authority.
 - Belgium: no binding construction AI code; adoption uneven. ISO 42001, ISO 23894 and ISO 19650 may support governance. Existing professional and safety obligations continue to apply.
- **Netherlands**: follows the EU framework; professional's intellectual contribution must remain dominant; transparency about AI use is essential; AI remains a tool and the user remains responsible.
- **UK**: sector-based, principles-based approach — no single AI statute. RICS 2025 report: ~45% no AI use, 1.5% widespread. RICS Responsible Use Guide (March 2026) requires written AI register, client notification, contracts detailing AI involvement and PI cover.
- **Brazil**: no AI law in force; draft AI Bill in Congress (risk-based, modelled on EU AI Act). No CREA guidance or ABNT standard specific to AI in design.

Liability and Decision-Making — Who Is Responsible When AI Gets It Wrong?

- Across all jurisdictions, the professional's duty of reasonable skill and care is unchanged: AI is a tool in the professional's hands, and the professional is treated as having endorsed any AI-assisted output.
- **Italy**: Articles 1176(2) (professional diligence), 1669 (ten-year building defect liability), 1229 (exclusions for wilful misconduct/gross negligence void) and 1916 (subrogation is derivative) of the Civil Code all apply to AI-related harms.
 - **Revised EU Product Liability Directive**: introduces disclosure mechanisms, presumptions and an eased burden of proof for claimants.
- **Belgium**: existing product liability, contractual and tort frameworks apply. Key focus: who selected the tool, controlled the data, reviewed the output and could have prevented the damage.
- **Netherlands**: the professional who uses AI remains responsible; failure to verify or control AI output may amount to serious negligence. Contractual liability caps may not hold where no AI control mechanisms were applied.
- **UK — UKJT Legal Statement (July 2026)**: AI has no legal personality; chain of contracts is the key framework. Due diligence on AI is likely a professional duty. Bolam/Bolitho standard applies. Emerging risk of under-use: not deploying AI where a competent professional would have may attract criticism. TECSA has published guidance on adjudicators' use of generative AI.
 - **Brazil**: liability allocated to identifiable persons/companies. Draft AI Bill points to strict liability for certain actors. Exclusion clauses with AI suppliers are unlawful; limitation provisions enforceable.
- Across jurisdictions, AI supplier terms may concentrate risk through broad caps and exclusions — weakening subrogation recoveries.

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Insurance Policy Response — Are Existing Policies Fit for Purpose?

- **Belgium:** “silent **but incomplete cover**” — AI losses may fall within existing PI, CAR, property or cyber policies depending on wording, but no policy was designed with AI in mind. Governance controls may increasingly affect insurability.
- **UK:** AI blurs claim categories — professional services may shade into technology failure, cyber or uninsured contractual risk. AI exclusions creeping into PI wordings, requiring lawful AI use, tested systems and human sign-off. Standalone AI products available but aimed at large-scale AI deployers. Practical steps: project-level AI policies, tiered risk classification, audit trails, early insurer engagement.
- **Italy:** distinguish PI from CAR insurance. Most insurers have not introduced dedicated AI exclusions, relying on existing software/technology exclusions. Expect greater disclosure obligations and more precise policy wording.
- **Netherlands:** where AI supports traditional professional work, existing PI wordings may suffice. Where a firm becomes a technology provider, separate tech PI cover may be needed.
- **Brazil:** most policies do not address AI. Whether an AI miscalculation is a “design defect” or excluded “software error” remains unsettled. Some insurers silently excluding AI losses via existing software exclusions.

Key Takeaways

1. **The professional’s duties do not disappear because AI is involved.** AI is a tool, not a decision-maker, not a shield, not an excuse.
2. **Get the contracts right before the loss, not after.** Liability caps, carve-outs, subrogation rights and audit trails need attention at the outset.
3. **Check your insurance cover now, not when a claim lands.** We are in a period of “silent but incomplete” cover — ambiguity that will only be resolved by a contested claim.

For further information, please contact your usual CMS adviser.